TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 284. 65

H. L. PINNEY, C. L. PINNEY, W. C. PATTERSON, AND THOMAS BROOKS, PLAINTIFFS IN ERROR,

vs.

R. T. NELSON.

IN ERROR TO THE SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

FILED MAY 16, 1900.

(17,766.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 20, 1900.

a Original.

In the Supreme Court of the United States.

H. L. PINNEY ET AL., Plaintiff- in Error,
vs.
R. T. NELSON, Defendant in Error. } Citation.

UNITED STATES OF AMERICA, *ss:*

To R. T. Nelson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the 17th day of May, 1900, pursuant to a writ of error sued out of said court to the superier court of the county of Los Angeles, State of California, wherein you are defendant and W. C. Patterson, H. L. Pinney, C. L. Pinney, and Thomas Brooks are plaintiffs in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 28th day of March, in the year of our Lord one thousand nine hundred.

W. F. FITZGERALD,
Judge of the Superior Court of the County of Los Angeles, State of California, Presiding in Department Five Thereof.

b [Endorsed:] Original. In the Supreme Court of the United States. H. L. Pinney *et al.*, plaintiff- in error, *vs.* R. T. Nelson, defendant in error. Citation. Received copy of within citation this 28th day of March, 1900. Taylor & Forgy, att'ys for def't in error. R. T. Nelson, by Taylor & Forgy.

c In the Superior Court of the County of Los Angeles, State of California.

R. T. NELSON, Plaintiff,
vs.
H. L. PINNEY ET ALS., Defendants }

The defendants, W. C. Patterson, H. L. Pinney, C. L. Pinney, and Thomas Brooks, having made their application for the allowance of the annexed writ of error, and the only questions decided in the said case having been whether the provisions of section 322 of the Civil Code of California are in conflict with the Constitution of the United States, and therefore invalid, and the decision and judgment in this case resting entirely upon the decision of this court that the said section is not in conflict with the provisions of the Constitution of the United States, and the said decision and judgment being erroneous if the said provisions of said Code are in conflict with the provisions of the Constitution of the United States, and this being the highest court of this State having jurisdiction of this action, and it being im-

possible for defendants to review the decision in this case by appeal to the supreme court of California or by further motions or proceedings in this or any other court, except by writ of error to the Supreme Court of the United States, and it appearing that the question presented in the said case is a Federal question—

d It is ordered that the writ of error hereto annexed be allowed by this court, and that the same be made a supersedeas, the bond, in the penal sum of one thousand ($1,000.00) dollars, at this time presented being approved.

And I do hereby certify that the superior court of the county of Los Angeles consists of six judges; that there is no chief justice or presiding judge of said court provided for either by the law of California or the rules of said court or any custom thereof; that by the rules of said court the same is divided into six departments, to which the respective cases are assigned, and that the judge of each department alone presides over the same; that the action mentioned in the annexed writ of error was duly assigned to department five of the said superior court of the county of Los Angeles, of which I am the presiding judge, and that all proceedings in said case have been taken in said department and the said case was tried and findings and judgment therein rendered by me.

In testimony whereof witness my hand this 27th day of March, 1900.

W. F. FITZGERALD,
Judge of the Superior Court, Presiding in Department 5 Thereof.

e UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the superior court of the county of Los Angeles, State of California, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said superior court, before you, between R. T. Nelson, plaintiff, and H. L. Pinney, C. L. Pinney, W. C. Patterson, Thomas Brooks, *et al.*, defendants, a manifest error hath happened, to the great damage of the said H. L. Pinney, C. L. Pinney, W. C. Patterson, and Thomas Brooks, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, on the seventeenth day of May next, in the said Supreme Court to be there and then held, that, the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this nin-teenth day of March, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fourth.

Seal U. S. Circuit Court, Southern Dist. Cal., 1886.

WM. M. VAN DYRE,
Clerk of the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California.

The above writ of error is hereby allowed.

——, ——.

f [Endorsed:] 33731. United States Supreme Court. H. L. Pinney, C. L. Pinney, W. C. Patterson, and Thomas Brooks, plaintiffs in error, *vs.* R. T. Nelson, defendant in error. Copy writ of error. A copy of the within writ received and filed Mar. 28th, 1900. C. W. Bell, Co. clerk, by C. G. Keyes, dep. Co. cl'k. C. W. Bell, county clerk and *ex officio* clerk of the superior court of Los Angeles county, State of California, by C. G. Keyes, deputy clerk. Filed Mar. 28, 1900. C. W. Bell, cl-rk, by C. G. Keyes, deputy.

g STATE OF CALIFORNIA, } ss:
County of Los Angeles, }

I, C. W. Bell, clerk of the superior court of the county of Los Angeles, State of California, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from 1 to 32, inclusive, contain a true and complete copy and transcript of the record and proceedings had in said court and of the assignment of errors in the cause of H. L. Pinney *et al.*, plaintiff- in error, *vs.* R. T. Nelson, defendant in error, as the same remain of record and on file in said office, in so far as the same relate to defendants H. L. Pinney, C. L. Pinney, W. C. Patterson, and Thomas Brooks.

And I further certify that no opinion of the court was rendered or filed in said cause.

In witness whereof I have caused the seal of said court to be hereunto affixed this the 25th day of April, in the year of our Lord one thousand nine hundred.

[Seal Superior Court, Los Angeles County, California.]

C. W. BELL, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled 4, 25, 1900. C. W. B.]

1 County of Los Angeles, }
State of California. }

R. T. Nelson, Plaintiff,
vs.
H. L. Pinney, C. L. Pinney, W. C. Patterson, Thomas Brooks, *et al.*, Defendants.

Plaintiff complains of defendants and alleges:

I.

That the Los Angeles Iron & Steel Company is and was at all times in this complaint mentioned a corporation duly organized and existing under and by virtue of the laws of the State of Colorado, having its principal place of business and its works at the city of Los Angeles, State of California, and doing business within the State of California.

II.

That at all times mentioned in this complaint there were subscribed for and issued of the capital stock of said corporation one thousand three hundred and eleven (1,311) shares and no more, and that all the stockholders thereof, who are named as defendants herein, are and were at all times herein mentioned citizens and residents of the State of California.

III.

That at all times herein mentioned the whole number of 1,311 shares of the said capital stock of said Los Angeles Iron & Steel Company and no more were actually subscribed for by, were issued to, and were owned by, and the ordinary stock certificates
2 therefor were held by the above-named defendants and certain others, and that each of said defendants was at said times a shareholder of and in said Los Angeles Iron & Steel Company in the number of shares set opposite his (or her) name as follows, to wit:

Name.	No. of shares.	Name.	No of shares.
H. L. Pinney	50	C. L. Pinney	42
R. H. Herron	25	F. Irwin Herron	10
W. C. Patterson	35	A. S. Robbins	155
C. W. Damorel	91	J. H. Harris	25
C. D. Pillsbury	38	F. R. Harris	115
Blanton Duncan	30	Albert Thomas (Union iron works)	35
Clark & Niemann	1	F. E. Little	22
Union Oil Company	45	John D. Clark	6
W. J. Boyle	35	W. T. Adams	66
Thomas Brooks	38	J. B. Anjer	20
Sabina A. Lanon	5	L. Bogardus	2
Chas Lytle	5	Mary Spencer Evans	40
D. C. Wilson	1	Jennie V. Durkee	25
John Rebman	65	J. F. Waesch	20
E. T. Plummer	2	Mrs. Mary Baldwin Hook	8
Mrs. May Baldwin	9		
Mrs. Mary E. Yerby	25		

IV.

That at the time the indebtedness hereinafter mentioned was incurred and contracted by said Los Angeles Iron & Steel Company the whole number of shares of the capital stock subscribed was, as aforesaid, 1,311 and no more, and that each of said defendants above named was then and there the owner and holder of the number of shares of said capital stock hereinabove set opposite his name, and each of said defendants became then and there individually and personally liable for the following proportions respectively of said debt and liability, to wit, said H. L. Pinney for 50/1311, said C. L. Pinney for 42/1311, said R. H. Herron for 25/1311, said F. Irwin Herron for 10/1311, said W. C. Patterson for 35/1311, said A. S. Robbins for 155/1311, said C. W. Damorel for 91/1311, said J. H. Harris for 25/1311, said C. D. Pillsbury for 38/1311, said F. R.
3 Harris for 115/1311, said Blanton Duncan for 30/1311, said Albert Thomas (Union iron works) for 35/1311, said Clark & Niemann for 1/1311, said Union Oil Company for 45/1311, said F. E. Little for 22/1311, said W. J. Boyle for 35/1311, said John D. Clark for 6/1311, said Thomas Brooks for 38/1311, said W. T. Adams for 66/1311, said Chas. Lytle for 5/1311, said J. B. Anjer for 20/1311, said Sabina A. Lanon for 5/1311, said L. Bogardus for 2/1311, said D. C. Wilson for 1/1311, said Mary Spencer Evans for 40/1311, said John Rebman for 65/1311, said Jennie V. Durkee for 25/1311, said E. T. Plummer for 2/1311, said J. F. Waesch for 20/1311, said Mrs. May Baldwin for 9/1311, said Mrs. Mary Baldwin Hook for 8/1311, said Mrs. Mary E. Yerby for 25/1311.

V.

That between November 1st, 1896, and December 7th, 1896, said plaintiff, R. T. Nelson, sold and delivered to said Los Angeles Iron and Steel Company, at the special instance and request of said company, fuel oil to the value of $1,311.50, and as a settlement of the said account the said Los Angeles Iron & Steel Company made, executed, and delivered to said plaintiff its two certain promissory notes in words and figures respectively as follows, to wit:

$645.00. LOS ANGELES, CAL., *Nov. 19th*, 1896.

Sixty days after date we promise to pay to the order of R. T. Nelson six hundred and forty-five dollars, with interest at — per cent. per annum, at our office, value received.

THE LOS ANGELES IRON & STEEL CO.,
By A. S. ROBBINS, *Pres.*
S. G. CHAMBERLAIN, *Ass't Sec'y.*

$666.50. LOS ANGELES, CAL., *Dec. 7th*, 1896.

Sixty days after date we promise to pay to the order of R. T. Nelson six hundred sixty-six and $\frac{50}{100}$ dollars, with interest at — per cent. per annum, at our office, value received.

THE LOS ANGELES IRON & STEEL CO.,
By A. S. ROBBINS, *Pres.*
S. C. CHAMBERLAIN, *Ass't Sec'y.*

That no part of said amount of $1,311.50 or of said notes
4 or either of them has been paid, and that there is now, to wit, September 30th, 1898, due, owing, and unpaid from said Los Angeles Iron & Steel Company to said plaintiff the said amount of $1,311.50, together with the interest thereon as in said promissory notes specified, making in all the sum of $1,475.88.

That the said defendants are individually liable to plaintiff for the respective proportions hereinabove specified of said sum of $1,475.88, and that no part of the same has been paid.

Second cause — action.

And for a second cause of action plaintiff alleges:

I.

Plaintiff expressly refers to paragraphs I, II, III, and IV above set out in this complaint and repleads each and all of said paragraphs, and by such reference and repleading makes each and all of said paragraphs a part hereof, as though the same and each of them should be herein set out.

II.

That between the 1st day of June, 1896, and the 30th day of November, 1896, Beach, Young & Cochran, a copartnership doing business under said firm name and style and composed of Fitz E. Beach, W. L. Young, and John Cochran, sold and delivered to the Los Angeles Iron & Steel Co., at its special instance and request, goods and merchandise, to wit, fuel oil, to the value of $462.00, and that no part of the same has been paid, but the same ever since has been and *how* is wholly due and unpaid.

That the said defendants are individually liable for the re-
5 spective proportions hereinabove specified of said sum of $462.00, and that no part of the same has been paid.

III.

That the said Beach, Young & Cochran, prior to the commencement of this action, assigned, transferred, and set over unto this plaintiff said account and all their right, title, and interest in and to the same, and that plaintiff is now the lawful owner and holder thereof.

And for a third cause of action plaintiff alleges:

I.

Plaintiff expressly refers to paragraphs I, II, III, and IV above set out in the first cause of action in this complaint, and repleads each and all of said paragraphs, and by such reference and repleading makes each and all of said paragraphs a part hereof, as though the same and each of them should be herein set out.

II.

That between October 1st and December 11th, 1896, F. L. Matthay sold and delivered to the Los Angeles Iron & Steel Company goods and merchandise, to wit, fuel oil, to the value of $602.28, and that no part of said sum has been paid; that as a settlement of the said account the said F. L. Matthay drew two drafts upon the said Los Angeles Iron & Steel Company in words and figures respectively as follows, to wit:

$542.28. LOS ANGELES, CAL., *Dec. 11th*, 1896.

Feb'y eleventh, after date, pay to the order of C. H. Matthay five hundred forty-two & $\frac{28}{100}$ dollars, value received, and charge the same to account of—

F. L. MATTHAY.

To the Los Angeles Iron & Steel Co., Los Angeles, Cal.

That said draft was duly presented by said payee and was duly accepted by said company writing across the face thereof as follows, to wit:

Accepted. The Los Angeles Iron & Steel Co., by J. G. Chamberlain, gen'l mgr.

6 That no part of said draft has been paid, and there is now, to wit, September 30th, 1898, due, owing, and unpaid thereon the sum of $604.86.

$60.00. LOS ANGELES, CAL., *Dec. 11th*, 1896.

Thirty days after date pay to the order of Los Angeles Sewer Pipe Co. sixty dollars, value received, and charge the same to account of—

F. L. MATTHAY.

To the Los Angeles Iron & Steel Co., Los Angeles, Cal.

That said draft was duly presented by said payee and was duly accepted by said company writing across the face thereof as follows, to wit:

Accepted. The Los Angeles Iron & Steel Co., by J. G. Chamberlain, gen'l mgr.

That no part of said draft has been paid, and there is now, to wit, September 30th, 1898, due, owing, and unpaid thereon the sum of $67.35.

That said draft bears the following indorsement, to wit:

Pay to the order of C. H. Matthay without recourse on us. Los Angeles Sewer Pipe Co., by W. A. Bingham, sec'y.

III.

That prior to the commencement of this action the said C. H. Matthay, being then and there the owner and holder of said drafts

and each of them, assigned to plaintiff all right, title, and interest in them and each of them and to the debt evidenced thereby, and that plaintiff is now the lawful owner and holder of said drafts and each of them, and that the said defendants are individually liable to plaintiff for the respective proportions hereinabove specified of said sum of $672.21, and that no part of the same has been paid.

Fourth cause of action.

And for a fourth cause of action plaintiff alleges:

I.

Plaintiff expressly refers to paragraphs I, II, III, and IV above set out in the first cause of action in this complaint, and re-
7 pleads each and all of said paragraphs, and by such reference and repleading makes each and all of said paragraphs a part hereof, as though the same and each of them should be herein set out.

II.

That between the 1st day of July, 1896, and the 13th day of November, 1896, the Los Angeles Stoneware Co., a corporation duly organized, existing under the laws of California, sold and delivered to the Los Angeles Iron & Steel Company goods, wares, and merchandise, at its special instance and request, to the value of $173.13, and that no part of the same has been paid; that subsequently and as a settlement of said account the said Los Angeles Iron & Steel Co. made, executed, and delivered to said Los Angeles Stoneware Co. its note in words and figures as follows, to wit:

$173.13. LOS ANGELES, CAL., *Nov.* 13, 1896.

Sixty days after date we promise to pay to the order of Los Angeles Stoneware Co. one hundred seventy-three $\frac{13}{100}$ dollars, at office of Los Angeles Iron & Steel Co.

THE LOS ANGELES IRON & STEEL CO.,
By A. S. ROBBINS, *President.*

That said note bears the following indorsement:

I hereby guarantee the payment of the within note, waiving demand, presentment for payment, protest, and notice of protest. Los Angeles Stoneware Co., W. J. Washburn, p't.

That after said indorsement the said note was delivered to the East Side Bank of Los Angeles, California, and the said bank, prior to the commencement of this action, assigned, transferred, and set over to plaintiff all right, title, and interest in and to the said note and the indebtedness evidenced thereby, and that plaintiff is now the lawful owner and holder thereof.

That no part of said note or of the indebtedness evidenced thereby has been paid, and that there is now, to wit, September 30th, 1898, due, owing, and unpaid thereon the sum of $189.71.

8 That the said defendants are individually liable to plaintiff for the respective proportions hereinabove specified of said sum of $189.71, and that no part of the same has been paid.

Fifth cause of action.

And for a fifth cause of action plaintiff alleges:

I.

Plaintiff expressly refers to paragraphs I, II, III, and IV above set out in the first cause of action in this complaint, and repleads each and all of said paragraphs, and by such reference and repleading makes each and all of said paragraphs a part hereof, as though the same and each of them should be herein set out.

II.

That the Los Angeles Sewer Pipe Association is a copartnership doing business under said firm name and style and composed of J. M. Riley and W. A. Bingham.

III.

That between the 1st day of October, 1895, and the 14th day of November, 1896, the said Los Angeles Sewer Pipe Association sold and delivered to said The Los Angeles Iron & Steel Company goods and merchandise to the value of $133.84, and that no part of the same has been paid.

That as a settlement of the said account the said The Los Angeles Iron & Steel Co. made, executed, and delivered to said Los Angeles Sewer Pipe Association its note in words and figures as follows, to wit:

$133.84. LOS ANGELES, CAL., *Nov.* 14, 1896.

Sixty days after date we promise to pay to the order of Los Angeles Sewer Pipe Association one hundred thirty-three & $\frac{84}{100}$ dollars, for value received, with interest at the rate of 8 per cent. per annum, at office of the Los Angeles Iron & Steel Company.

THE LOS ANGELES IRON & STEEL CO.,
By A. S. ROBBINS, *President.*
S. C. CHAMBERLAIN, *Ass't Sec'y.*

That said note bears the following indorsement:

9 Los Angeles Sewer Pipe Association, by W. A. Bingham, sec.; Jas. M. Riley, W. A. Bingham.

That no part of said note or of the indebtedness evidenced thereby has been paid, and that there is now, to wit, September 30th, 1898, due, owing, and unpaid thereon the sum of $153.35.

IV.

That said Los Angeles Sewer Pipe Association, prior to the commencement of this action, assigned, transferred, and set over to plaintiff all its right, title, and interest in and to said note and the in-

debtedness evidenced thereby, and that plaintiff is now the lawful owner and holder thereof; that said defendants are individually liable to plaintiff for the respective proportions hereinabove specified of said sum of $153.35, and that no part of the same has been paid.

Sixth cause of action.

And for a sixth cause of action plaintiff alleges:

I.

Plaintiff expressly refers to paragraphs I, II, III, and IV above set out in the first cause of action in this complaint, and repleads each and all of said paragraphs, and by such reference and repleading makes each and all of said paragraphs a part hereof, as though the same and each of them should be herein set out.

II.

That between the 1st day of August, 1896, and the 10th day of December, 1896, Stanley Richmond sold and delivered goods, wares, and merchandise, to wit, fuel oil, to said Los Angeles Iron & Steel Company, at its special instance and request, to the value of $475.95, and thereafter and as a settlement of the said account and upon the respective dates thereof said Stanley Richmond drew upon
10 said Los Angeles Iron & Steel Company two drafts in words and figures respectively as follows, to wit:

LOS ANGELES, CAL., *September* 17, 1896.

L. A. Iron & Steel Co., city.

GENTLEMEN: Please pay Mr. Libby the sum of two hundred forty-nine $\frac{54}{100}$ dollars ($249.54) and charge the same to my account, and oblige—

STANLEY RICHMOND.

Said draft bears the following acceptance written across the face thereof, to wit:

Accepted, payable Oct. 8th, 1896. The Los Angeles Iron & Steel Co., by J. G. Chamberlain, gen'l mgr.

That said draft was duly presented for payment, but no part thereof has been paid, except the sum of $100, paid on or about Oct. 20, 1896.

Also—

LOS ANGELES, CAL., *Dec. 10th*, 1896.

L. A. Iron & Steel Co., city.

GENTLEMEN: Please pay C. H. Libby or order the sum of two hundred twenty-six and $\frac{44}{100}$ dollars and charge the same to my account, and oblige—

(Signed) STANLEY RICHMOND.

Said draft bears the following acceptance written across the face thereof, to wit: The above account and order is hereby accepted by

us. The Los Angeles Iron & Steel Co., by J. G. Chamberlain, gen'l mgr.

That said draft was duly presented for payment, but that no part thereof has been paid.

III.

That thereafter, to wit, on the 8th day of March, 1897, in an action in the superior court of Los Angeles county, California, brought by said C. H. Libby to recover the said amounts as specified in said aforementioned drafts from said corporation, judgment was rendered and entered by said court in favor of said plaintiff for the sum of three hundred eighty-three $\frac{54}{100}$ ($383.54) — and costs, amounting to the sum of $8.05, and that no part of said judgment has been paid, but the same ever since has been and now is wholly due and unpaid and unsatisfied.

11

IV.

That prior to the commencement of this action the said C. H. Libby assigned, transferred, and set over to plaintiff herein all right, title, interest, and claim in and to said aforementioned drafts and in and to the claim and account evidenced thereby and in and to the said judgment, and that plaintiff is now the lawful owner and holder thereof, and that the same has not been paid; that there is now due, owing, and unpaid from said defendants respectively the proportions hereinbefore set out of said sum of $391.59.

Wherefore plaintiff demands judgment against said defendants and each of them respectively, as follows, to wit:

Against	H. L. Pinney, for the sum of	$127.25
	C. L. Pinney, for the sum of	106.89
	R. H. Herron, for the sum of	63.63
	F. Irwin Herron, for the sum of	25.45
	W. C. Patterson, for the sum of	89.07
	A. S. Robbins, for the sum of	299.00
	Judgment for a greater sum being expressly waived.	
	C. W. Damorel, for the sum of	231.60
	J. H. Harris, for the sum of	63.63
	C. D. Pillsbury, for the sum of	96.71
	F. R. Harris, for the sum of	292.67
	Blanton Duncan, for the sum of	76.35
	Albert Thomas, doing business as the Union iron works, for the sum of	89.07
	Clark & Niemann, partners, for the sum of	2.55
	Union Oil Company, a corporation, for the sum of	114.52
	F. E. Little, for the sum of	55.99
	W. J. Boyle, for the sum of	89.07
	John D. Clark, for the sum of	15.27
	Thomas Brooks, for the sum of	96.71

	W. T. Adams, for the sum of	167.97
	Chas. Lytle, for the sum of	12.72
12–18	J. B. Anjer, for the sum of	50.90
	Sabina A. Lannon, for the sum of	12.72
	L. Bogardus, for the sum of	5.09
	D. C. Wilson, for the sum of	2.55
	Mary Spencer Evans, for the sum of	101.80
	John Rebman, for the sum of	165.42
	Jennie V. Durkee, for the sum of	63.63
	E. T. Plummer, for the sum of	5.09
	J. F. Waesch, for the sum of	50.90
	May Baldwin, for the sum of	22.90
	Mary Baldwin Hook, for the sum of	20.36
	Mary E. Yerby, for the sum of	63.63

And costs.

TAYLOR & FORGY AND
FITZ E. BEACH,
Attorneys for Plaintiff.

(Endorsed:) 33731. Plaintiff deposits $2.00 on costs. No. 5329. In the justice court of Los Angeles city, county of Los Angeles, State of California. R. T. Nelson, plaintiff, *vs.* H. L. Pinney *et al.*, defendants. Complaint. Filed Sep. 30, 1898. D. C. Morrison, city justice. Filed Oct. 23, 1899. C. W. Bell, clerk, by J. O. Lowe, deputy.

19 In the Superior Court of the County of Los Angeles, State of California.

R. T. NELSON, Plaintiff,
vs.
H. L. PINNEY ET AL., Defendants. } Answer.

Now come defendants W. C. Patterson, C. L. Pinney, H. L. Pinney, and Thomas Brooks and answer plaintiff's complaint as follows:

I.

Defendants deny each and every allegation contained in plaintiff's complaint except the allegation that the Los Angeles Iron and Steel Company is a corporation organized and existing under the laws of the State of Colorado.

II.

Defendants allege that there is no statute of the State of Colorado providing that stockholders shall be liable for any portion of the indebtedness of a corporation, and allege that under the laws of the State of Colorado a stockholder in a corporation is not liable for any portion of the indebtedness of said corporation.

III.

Defendants allege that plaintiff relies wholly in this action upon the provisions of section 322 of the Civil Code of California, which section provides as follows:

"Each stockholder of a corporation is individually and personally liable for such portions of its debts and liabilities as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion only of each debt or claim against the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders, for the proportion of his claim payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each, in conformity therewith. If any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt, and if an action has been brought against him upon such debt, it shall be dismissed, as to him, upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred; and such liability is not released by any subsequent transfer of stock. The term stockholder, as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear on the books in the name of another; and also to every person who has advanced the instalments or purchase-money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian, or other trustee, who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian, or trustee, shall not be liable under the provisions of this section, by reason of any such investment; nor shall the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but the pledgor, or person or estate represented, is to be deemed the stockholder as respects such liability. In corporations having no capital stock, each member is individually and personally liable for his proportion of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability, as by this section may be brought against one or more stockholders, and similar judgments may be rendered. The liability of each stockholder of a corporation formed under the laws of any other State or Territory of the United States, or of any foreign country, and doing business within this State, shall be the same as the liability of a stockholder of a corporation created under the constitution and laws of this State."

And defendants allege that there is no other statute of the State of California providing that stockholders shall be liable for any por-

tion of the indebtedness of a corporation, and defendants allege that the provisions of said section 322 of the Civil Code of Cali-
21 fornia attempting to provide that the stockholders of a foreign corporation shall be liable for the indebtedness of the corporation are unconstitutional and invalid because contrary to the provision of section 10, article 1, of the Constitution of the United States, providing that no State shall pass a law impairing obligations of contracts, and also invalid and unconstitutional because in violation of the provisions of section 1 of article XIV of the Constitution of the United States, providing that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

McKINLEY & GRAFF,
Attorneys for Defendants Patterson et al.

Endorsed: (Filed Jan. 9, 1900.) C. W. Bell, clerk, by Henry Sherer, deputy.

22 In the Superior Court of the County of Los Angeles, State of California.

R. T. NELSON, Plaintiff,
vs.
H. L. PINNEY ET AL., Defendants. } Stipulation.

It is hereby stipulated that all of the allegations of plaintiff's complaint are true except the allegations that defendants became and are, individually and personally, liable for certain proportions of the indebtedness of the Los Angeles Iron & Steel Company, and that all of the allegations of defendants' answer are true except the allegations as to the unconstitutionality and invalidity of section 322 of the Civil Code of California as being in violation of the Constitution of the United States, and that the truth or falsity of the allegations excepted as above is dependent upon the question as to whether section 322 of the Civil Code of California is in violation of the provisions of the Constitution of the United States.

And it is stipulated that the only question in this case is as to whether section 322 of the Civil Code of California is in violation of the provisions of the Constitution of the United States, and if it is in violation of such provisions defendants are entitled to judgment, but if said section is not in violation of said provisions, then plaintiff is entitled to judgment as prayed for in his complaint.

TAYLOR & FORGY &
FRITZ E. BEACH,
Attorneys for Plaintiff.
McKINLEY & GRAFF,
Attorneys for Defendants.

Filed Jan. 9, 1900.
C. W. BELL, *Clerk*,
By HENRY SHERER, *Deputy.*

23 In the Superior Court of the State of California in and for the County of Los Angeles.

R. T. NELSON, Plaintiff,
vs.
H. L. PINNEY, C. L. PINNEY, W. C. Patterson, C. W. Damerel, Thomas Brooks, and F. E. Little, Defendants.

No. 33731. Findings of Fact and Conclusions of Law.

This cause coming on to be heard for trial the 17th day of January, 1900, Taylor & Forgy, Esqs., appearing for the plaintiff, and J. W. McKinley, Esq., Flint & Barker, Esqs., and Ben. Goodrich, Esq., appearing for the defendants—

A jury trial was duly waived and the cause was tried by the court without a jury.

Proofs were duly made by the respective parties and their stipulation, duly executed, was filed herein, and thereafter the cause was submitted to the court for its decision.

Being fully advised in the premises and having duly considered the same and the stipulations of the parties, the court makes the following findings of fact herein:

I.

That all the allegations of the complaint are true, and that the allegations of the answer are not true where the same are in conflict with the allegations of said complaint.

II.

That the Los Angeles Iron & Steel Company was a corporation organized on the 8th day of March, 1893, and incorporated under the laws of the State of Colorado; that the seventh provision of its articles of incorporation is as follows, to wit: The said company is created for the purpose of carrying on part of its business beyond the limits of the State of Colorado, and the principal office of
24 said company in the State shall be kept at the city of Denver, Arapahoe county, and the principal plant and principal operations of said company beyond the limits of the State shall be in Los Angeles county, State of California, and such other places in the State of California as may be decided upon by the board of directors. The principal business of said company in the State of Colorado shall be carried on in Arapahoe county.

III.

That the defendants are and were at all times herein mentioned residents and citizens of the State of California.

IV.

That all the indebtedness of said Los Angeles Iron & Steel Company to plaintiff and to plaintiff's assignors was created by contracts made, executed, and to be performed in the State of California.

VI.

That at the time the said indebtedness was created and incurred by the said company there were issued of the capital stock thereof the number of 1,311 shares, and that the defendants were at said times the owners respectively of the number of said shares as set opposite their respective names, as follows, to wit:

H. L. Pinney, 50 shares.
C. L. Pinney, 42 shares.
W. C. Patterson, 35 shares.
C. W. Damerel, 91 shares.
F. E. Little, 22 shares.
Thomas Brooks, 38 shares.

VII.

That the amount of the indebtedness of said Los Angeles Iron & Steel Company to the plaintiff upon the several causes of action mentioned in the complaint herein to date is as follows, to wit:

Upon the 1st cause of action, $1,311.50, and $288.38 interest;
Upon the 2nd cause of action, $462.00, and $— interest;
Upon the 3rd cause of action, $602.28, and $130.80 interest;
Upon the 4th cause of action, $173.13, and $38.54 interest;
Upon the 5th cause of action, $133.84, and $34.93 interest;
Upon the 6th cause of action, $383.54, and $78.42 interest,
Making in all the sum of $3,637.36, no part of which is paid.

VIII.

That said H. L. Pinney is liable to plaintiff for 50/1311 thereof, and said C. L. Pinney is liable to plaintiff for 42/1311 thereof, and said W. C. Patterson is liable to plaintiff for 35/1311 thereof, and said C. W. Damerel is liable to plaintiff for 91/1311 thereof, and said F. E. Little is liable to plaintiff for 22/1311 thereof, and said Thomas Brooks is liable to plaintiff for 38/1311 thereof.

IX.

That section 322 of the Civil Code of California, under which said defendants are liable for the payment of said proportions of the indebtedness of the Los Angeles Iron & Steel Company to plaintiff, is not in violation of any of the provisions of the Constitution of the United States.

Conclusion of Law.

As a conclusion of law from the foregoing facts plaintiff is entitled to several judgments against said defendants respectively, as follows, to wit:

Against H. L. Pinney for the sum of	$138.70
Against C. L. Pinney for the sum of	116.50
Against W. C. Patterson for the sum of	97.09

Against C. W. Damerel for the sum of..... 251.43
Against F. E. Little for the sum of..... 61.02
26 Against Thomas Brooks for the sum of..... 105.41

$770.85

And the costs of suit.
Dated Los Angeles, Cal., January 25th, 1900.

W. F. FITZGERALD,
Judge of the Superior Court.

Endorsed: Filed Jan. 25, 1900. C. W. Bell, clerk, by C. G. Keyes, deputy.

27 In the Superior Court of the State of California in and for the County of Los Angeles.

R. T. NELSON, Plaintiff,
vs.
H. L. PINNEY, C. L. PINNEY, W. C. PATTERSON, C. W. Damerel, F. E. Little, and Thomas Brooks, Defendants. } Judgment. No. 33731.

This cause coming on for trial on the 17th day of January, 1900, the parties duly appearing by their respective counsel, Taylor & Forgy for the plaintiff, and J. W. McKinley, Ben. Goodrich, and Flint & Barker for the defendants—

The cause having been tried by the court without jury and proofs having been duly made, the cause was argued and submitted, whereupon the court rendered judgment for the plaintiff and duly made and filed its findings of fact and conclusions of law therefrom, wherein it was found and concluded that plaintiff was entitled to several judgments against said defendants:

Now, therefore, it is ordered, adjudged, and decreed that the plaintiff, R. T. Nelson, do have and recover of the defendants severally the amounts as follows, to wit:

Of H. L. Pinney, the sum of $138.70.
Of C. L. Pinney, the sum of $116.50.
Of W. C. Patterson, the sum of $97.09.
Of C. W. Damerel, the sum of $251.43.
Of F. E. Little, the sum of $61.02.
Of Thomas Brooks, the sum of $105.41.
28 And all of said defendants his costs herein, taxed at $2.00.
Dated Los Angeles, Cal., January 25th, 1900.

W. F. FITZGERALD,
Judge of the Superior Court.

Endorsed: Filed Jan. 25, 1900. C. W. Bell, clerk, by C. G. Keyes, deputy. Docketed Jan. 25, 1900. Entered Jan'y 2, 1900, Book 89, page 73, by D. S. Burson, Jr., deputy clerk.

29 In the Superior Court of the State of California in and for the County of Los Angeles.

R. T. NELSON, Plaintiff,
vs.
H. L. PINNEY ET AL., Defendants. } ss.:

I, C. W. Bell, county clerk of the county of Los Angeles, State of California, and *ex officio* clerk of the superior court in and for said county, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled action and recorded in Judgment Book 89 of said court, at page 73, and I further certify that the foregoing papers hereto annexed constitute the judgment-roll in said action.

Witness my hand and the seal of said superior court this 25th day of January, A. D. 1900.

C. W. BELL, *Clerk*,
By D. S. BURSON, JR., *Deputy*.

30 It is hereby stipulated that the foregoing is a full and correct copy of the judgment-roll and of all the pleadings and proceedings in the action therein named in so far as the same relate to the defendants H. L. Pinney, C. L. Pinney, W. C. Patterson, and Thomas Brooks.

TAYLOR & FORGY,
Attorneys for Plaintiff.
McKINLEY & GRAFF,
Attorneys for Defendants.

30½ [Endorsed:] No. 33731. Superior court, Los Angeles county. R. T. Nelson, plaintiff, *vs.* H. L. Pinney *et al.*, defendants. Judgment-roll. Filed Jan. 25, 1900. C. W. Bell, clerk, by D. S. Burson, Jr., deputy. Entered Jan. 25, 1900, in Book 89, page 73, by D. S. Burson, Jr., deputy.

31 The Supreme Court of the United States.

W. L. PINNEY ET AL., Plaintiffs in Error,
vs.
R. T. NELSON, Defendant in Error.

Plaintiffs in error hereby assign the following as the errors of the court in the above-entitled action, viz:

I.

The court erred in finding that the provisions of section 322 of the Civil Code of California are not unconstitutional and invalid and contrary to the provisions of section 10, article 1, of the Constitution of the United States, providing that no State shall pass a law impairing the obligations of contract.

II.

The court erred in finding that the provisions of section 322 of the Civil Code of California, attempting to provide that the stock-

holders of a foreign corporation shall be liable for the indebtedness of the corporation, are not invalid, unconstitutional, and — violation of the provisions of section I of article XIV of the Constitution of the United States, providing that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

III.

The court erred in rendering judgment for plaintiff because the provisions of section 322 of the Civil Code of California, attempting to provide that the stockholders of a foreign corporation shall be liable for the indebtedness of the corporation, are unconstitu-
32 tional, invalid, and in violation of the provisions of the Constitution of the United States mentioned in the above assignments of error.

Wherefore plaintiffs in error pray that said judgment be reversed.

McKINLEY & GRAFF,
Attorneys for Plaintiffs in Error.

(Endorsed:) Filed Apr. 23, 1900. C. W. Bell, clerk, by J. O. Lowe deputy.

33 [Endorsed:] No. —. In the Supreme Court of the United States. H. L. Pinney *et al.*, plaintiffs in error, *vs.* R. T. Nelson, defendant in error. Assignment of errors. McKinley and Graff, att'ys for pl't'ffs in error.

34 [Endorsed:] No. 33731. In the Supreme Court of the United States. H. L. Pinney *et al.*, plaintiffs in error, *vs.* R. T. Nelson, defendant in error. Writ of error, citation, return. McKinley & Graff, att'ys for pl't'ffs in error.

35 Original.

In the Supreme Court of the United States.

H. L. PINNEY ET AL., Plaintiffs in Error,
vs.
R. T. NELSON, Defendant in Error.

It is hereby stipulated that the clerk of the Supreme Court shall only cause to be printed in the above-entitled action the following portions of the record, viz., the writ of error and order allowing the same, the citation, the complaint, the answer filed in the superior court Jan'y 9th, 1900, the stipulation, the findings of fact and conclusions of law, judgment, and assignment of errors.

M. L. GRAFF,
Counsel for Plaintiffs in Error.
J. A. ANDERSON,
Counsel for Defendant in Error.

J. W. McKINLEY,
Attorneys for Plaintiffs in Error.
W. S. TAYLOR AND
EDWARD W. FORGY,
Attorneys for Defendant in Error.

36 [Endorsed:] Original. No. —. In the Supreme Court of the United States. H. L. Pinney *et al.*, plaintiffs in error, *vs.* R. T. Nelson, defendant in error. Stipulation. McKinley & Graff, attorneys for pl'ffs in error.

37 [Endorsed:] File No., 17,766. Supreme Court U. S., October term, 1899. Term No., 652. H. L. Pinney *et al.*, pl'ffs in error, *vs.* R. T. Nelson. Stipulation as to printing record. Office Supreme Court U. S. Filed May 14, 1900. James H. McKenney, clerk.

Endorsed on cover: File No., 17,766. California superior court, Los Angeles county. Term No., 284. H. L. Pinney, C. L. Pinney, W. C. Patterson, and Thomas Brooks, plaintiffs in error, *vs.* R. T. Nelson. Filed May 16th, 1900.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

H. L. Pinney, et. al.,
Plaintiffs in Error.

vs.

R. T. Nelson,
Defendant in Error.

POINTS AND AUTHORITIES OF PLAINTIFFS IN ERROR.

STATEMENT OF FACTS.

This is an action brought by the defendant in error against plaintiffs in error to recover judgment against them upon a claim against the Los Angeles Iron & Steel Company, a corporation, organized under the laws of the state of Colorado. [Tr. fol. 24.]

The only question involved in the case is whether the provisions of Sec. 322 of the Civil Code of California are invalid because in violation of the provisions of the constitution of the United States. [Tr. fol. 22.]

As the amount involved was not sufficient to give jurisdiction upon appeal to the Supreme Court of

California, the action was brought up to the Supreme Court of the United States upon writ of error.

SPECIFICATIONS OF ERROR.

I.

The court erred in finding that the provisions of section 322 of the Civil Code of California are not unconstitutional and invalid and contrary to the provisions of section 10 of the Constitution of the United States, providing that no state shall pass a law impairing the obligations of a contract.

II.

The court erred in finding that the provisions of section 322 of the Civil Code of California, attempting to provide that the stockholders of a foreign corporation shall be liable for the indebtedness of the corporation, are not invalid, unconstitutional and violation of the provisions of section 1, of article XIV of the Constitution of the United States, providing that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

III.

The court erred in rendering judgment for plaintiff, because the provisions of section 322 of the Civil Code of California, attempting to provide that the stockholders of a foreign corporation shall be liable for the indebtedness of the corporation, are unconstitutional, invalid and in violation of the provisions of the constitution of the United States, mentioned in the above assignments of error.

ARGUMENT.

That Portion of Section 322 of the Civil Code of California, Providing for Liability of Stockholders of Foreign Corporations for the Indebtedness of such Corporations, is Invalid, Because in Conflict with the provisions of the Constitution of the United States.

The only question involved in this case is as to the validity of the following portion of section 322 of the Civil Code of California, to wit:

"The liability of each stockholder of a corporation, formed under the laws of any other state or territory of the United States, or of any foreign country, and doing business within this state, shall be the same as the liability of a stockholder of a corporation created under the constitution and laws of this state."

This provision must either be good as to all foreign corporations doing business in California, and create a liability for all of their stockholders for the indebtedness of the corporation, which may be enforced wherever the stockholders may be found, or it is absolutely void. It cannot be valid as to some foreign corporations and not as to others; or be held valid as to residents of California and invalid as to residents of other states.

It is general in its terms and intended to apply to all foreign corporations that do business in California, and if valid, must be so as to all corporations, including those not organized to do business in California. It is not a provision which is severable and can be applied to some and not to others. There are no separate provisions into which it can be divided and a portion of them held constitutional and a portion unconstitutional, but it must all stand and fall together.

People v. Perry, 79 Cal. 115.

"We know of no precedent for holding that a clause of a statute, which as enacted is unconstitutional, may be changed in meaning in order to give it some operation, when admittedly it cannot operate as the legislature intended."

The question to be determined is, therefore, whether a state can create new liabilities and responsibilities for the stockholders of a foreign corporation, or in other words, make a contract for them without their consent.

The Code provision in question, is contrary to the principle upon which statutes creating a stockholder's liability have been sustained. Such statutes have been held good, because primarily they rest upon the contract of the parties. Thus the liability of the stockholder of a corporation arises from the fact that when he becomes a stockholder, he contracts with reference to the statutes of the state of the incorporation, and is therefore subject to all the liabilities which such statutes impose. His liability is therefore the consequence of his own act, and one to which he has subjected himself and is not the mere arbitrary creation of a statute undertaking to make a contract for him.

This principle has been followed by all the decisions of the Supreme Court of California and even in those which hold that the stockholders of a corporation are liable, under the provisions of the constitution and code, imposing obligations not existing at the time they became stockholders, because the constitution of 1849 reserved to the legislature the power to alter all laws with reference to corporations. In such case, the stockholders created a liability, because they contracted with reference to existing statutes, which authorized the legislature to impose additional obligations upon them.

"It is objected, however, that if the provisions of

the code and constitution are applicable, they impose obligations upon appellants for which they were not liable when they became stockholders, and are in conflict with that provision of the constitution of the United States, which prohibits the states from passing laws impairing the obligation of contracts, and are, therefore, as to them, unconstitutional and of no effect.

"The answer to this objection is that the constitution of 1849 provided: "Corporations may be created by special act, except for municipal purposes. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed. [Const., Art. IV. Sec. 31.]

"Under the authority thus conferred both the legislature and the people had power to change the law in regard to the liability of stockholders, without violating any provision of the constitution of the United States.

"*In the Matter of Empire City Bank*, 18 N. Y., 199, a similar question arose. That was a proceeding to enforce a personal liability of stockholders for the debts of the bank under an act passed after the bank was incorporated. The court by Denio, J., said:

"The statute under which the proceedings were had was challenged as being in violation of the constitution of the United States and of this state. By the federal constitution, no state can rightfully enact a law impairing the obligation of contracts. It is argued, that by the general banking law, the association which it authorized are alone responsible for its contracts, the shareholders being wholly exempt from liability, and it is insisted that this is in the nature of a contract between the state and the shareholders, and that the constitutional guaranty of the integrity of contracts, in the national constitution, would be illusory if the state could, by changing its constitution, subvert all existing engagements; and hence, that the guaranty applies as well to state constitutions as to other state laws. Without denying or affirming the soundness of these positions, it is enough to say that the general banking law expressly reserved to the legislature the power to alter or re-

peal it, so that any changes which it or the people think proper to make, are fully authorized by the provisions of the supposed contract itself. [See also the following cases, which are to the same effect: In the matter of Lee, etc., Bank, 21 N. Y. 9; In the matter of Reciprocity Bank, 22 N. Y. 9; Sleeper v. Goodwin, 67 Wis. 577; Tomlinson v. Jessup, 15 Wall 454; Meadow Dam Co. v. Gray, 30 Me. 551."]

McGowan v. McDonald, 111 Cal. 66.

"*How the Liability Arises.*—A provision in the charter or general law under which a corporation was formed, declaring that its shareholders shall be individually liable to creditors, does not of itself, by force of the legislative act, render them individually liable. It is merely a legislative enactment that any person who shall become a shareholder in the corporation, or, in other words, enter into the contract of membership, shall at the same time assume an individual liability to the creditors of the company. The function of the legislature in creating this liability is merely to declare the legal effect of the voluntary acts of the parties, and to enable them to carry out their purposes in a manner which would not have been authorized at common law. When a person becomes a shareholder in a corporation, he agrees with all the other shareholders to unite with them upon the terms provided by the company's charter; he also undertakes to become liable to any person who shall give credit to the corporation, to the extent of the capital which he has agreed to contribute.

If the company's charter provides that the shareholders shall be subject to a special individual liability to creditors, persons becoming shareholders agree to become liable, both in a corporate capacity and individually, to all persons who shall give credit to the corporation. They offer to all the world to become liable, in their corporate capacity, to the extent of the capital which they have agreed to contribute for the purpose of carrying on the company's business, and they offer to become liable individually to the amount expressly provided by their charter or incorporation law. Parties who contract with the corpora-

tion contract upon the faith of this liability, held out as their security; and the offer of the shareholders, being thereby accepted, ripens into a binding contract."

Morawetz on Corporations, Sec. 870.

"When an individual becomes a stockholder in a corporation, it is with the implied assent on his part to the right of the legislature to alter and amend the law within the scope of the constitutional provision, and is as binding upon him as a contract to like effect of his own making would be."

Market St. Ry. Co. v. Hellman, 109 Cal. 584;
Glenn v. Saxton, 68 Cal. 353.

As the contract is complete at the time of the organization of a corporation, no legislature has the power to change the contract or impose a new obligation, except the legislature of the state in which the incorporation took place, and that only when the right to alter the law with reference to the corporation is reserved either in the constitution or statutes, prior to its organization.

To impose any liability, not created by the original contract impairs the obligations of the contract and takes property without due process of law, because it subjects the property of the stockholder to liability upon a contract made without his consent, and without giving him an opportunity to be heard.

The relation of the creditor of a corporation to the stockholder arises through the contract between the corporation and the stockholders. In the case of a California corporation, the stockholder, by his subscription for stock, agrees that he will pay his proportion of the debts incurred by the corporation, as the statute imposing such a liability becomes a part of his contract of subscription. But the subscriber to the stock of a Colorado corporation only contracts for such liability as the statutes of Colorado impose, and it

is admitted in this case, that the statutes of Colorado impose no individual liability upon stockholders.

The statutes of Colorado are a part of the contract of subscription, but the laws of California are not and cannot be a portion of the contract between a Colorado corporation and its stockholders.

"The defendant took stock in the Tacoma bank subject to the burden of the law, which he impliedly agreed to bear, as he could not otherwise have become a stockholder. [Lowry v. Inman, 46 N. Y. 119]. That burden is an asset, vested in the receiver, and can be enforced in this state the same as a promissory note, not because the laws of Washington are in force here, but because the defendant voluntarily assented to the conditions upon which the bank was organized. As was said in the case last cited, 'a personal liability of stockholders for the debts of a corporation, in virtue of the charter, is not in the nature of a penalty of forfeiture, and does not exist solely as a liability imposed by statute. It is not enforced simply as a statutory obligation, but is regarded as voluntarily assumed, by the act of becoming a stockholder. It is like other obligations, assumed in the form prescribed by the laws of the place where made, and, being valid there, is enforceable everywhere. Its validity, interpretation and effect are to be determined by the *lex loci*, but the remedy is governed by the *lex fori*.' While the liability is, for convenience, frequently called statutory, because the statute, which is the constitution of the bank, affixed the obligation to the ownership of stock, it is in fact contractual and springs from an implied promise."

Howarth v. Angle, 162 N. Y. 187.

In the case of Ferguson v. Sherman, 116 Cal. 169, the Supreme Court of California very carefully considered and passed upon the liabilities of the stockholders of a corporation organized in Kansas, and held that the law of the state in which that corporation was organized, governed its relation to its stockholders and enforced the claim of a creditor of the corporation

against the defendants who were its stockholders, based upon the provisions of the laws of Kansas and held that the so-called statutory liability was "a simple personal liability growing out of the contract of the shareholder."

"The individual liability of the stockholder under that Act (National Bank Act), is an essential element in the contract by which the stockholder became a member of the corporation. It is voluntarily entered into by subscribing for and accepting shares of stock, its obligation becomes a part of every contract, debt and engagement of the bank itself as much so as if they were made directly by the stockholders instead of by the corporation."

Richmond v. Irons, 121 U. S. 27.
Stuart v. Hayden, 169 U. S. 1.
Flash v. Conn, 109 U. S. 371.
Hatch v. Dana, 11 Otto 205.
Matteson v. Dent, 176 U. S. 521.
Bailey v. Hollister, 26 N. Y. 112.

In the case of Russell v. Pac. Ry. Co. (113 Cal. 258), the defendants were stockholders in corporations organized in the state of Illinois to operate street railroads in the city of Los Angeles, and the Supreme Court of California held in effect that the law of the place of incorporation governs the liability of the stockholders, but that the claim of plaintiff in that case could not be enforced because the law of Illinois limits the mode of enforcement to a remedy, which could not be exercised in California.

The court said:

"The general rule upon this subject is very well established. Where a statute creates a right and prescribes a remedy for its enforcement, that remedy is exclusive. Where a liability is created, which is not penal, and no remedy is prescribed, the liability may be enforced wherever the person is found. The procedure will, however, be entirely governed by the law

of the forum. If the law creating the liability provides for a particular mode for enforcing it, the mode limits the liability.

"If it be a contract, the parties here contracted with the understanding that they can be held liable in no other way. * * *

"By the eighth section of the Illinois statute above quoted a special remedy is provided, and not only so, but plainly it was intended that it should be the only remedy.

"By the first clause, apparently an absolute liability is imposed upon the stockholder for the debts of the corporation to the extent of the amount unpaid upon his stock. If this were all, the liability would be primary, and could be enforced without suing the corporation and without reference to its solvency. The Illinois remedy cannot be imported here."

Russell v. Pacific Ry. Co., 113 Cal. 261.

"In all the diversity of opinion in the courts of the different states, upon the question how far a liability imposed upon a stockholder in a corporation by the law of the state which creates it, can be pursued in a court held beyond the limits of that State, no case has been found in which such a liability has been enforced by any court, without a compliance with the conditions applicable to it under the legislative Acts and judicial decisions of the State which creates the corporation and imposes the liability. To hold that it could be enforced without such compliance would be to subject stockholders residing out of the State to a greater burden than domestic stockholders."

Fourth National Bank v. Francklyn 120 U. S. 747.

The Supreme Court of California, in the cases of Dennis v. Superior Court, 95 Cal. 548, and Kennedy v. Cal. Savings Bank, [97 Cal. 96], held that the obligation of the stockholders under the California statute arises upon contract.

In the latter case the court said:

" It would seem, therefore, that an action against

a stockholder to recover his proportion of the amount due upon a contract made by a corporation, which is only an agency adopted by him for the transaction of business, was essentially an action founded upon a contract. [Norris v. Wrenschall, 34 Md. 496; Corning v. McCullough, 1 N. Y. 47; Hawthorne v. Calef., 2 Wall 10; Dennis v. Superior Court, 91 Cal. 548; Cook on Stockholders, Sec. 243; Allen v. Sewall, 2 Wend 327; Ex Parte Van Riper, 20 Wend 616.]

"In the case of Dennis v. Superior Court, 91 Cal. 548, the question whether an action like this was one arising upon contract was directly involved, and we therefore, said:

"We think that the personal liability of a stockholder of a corporation for his proportion of the indebtedness of the corporation is an obligation arising upon contract within the meaning of Sec. 112, of the Code of Civil Procedure, giving original jurisdiction to a justice's court in actions arising upon contract for the recovery of money, when the amount claimed is less than three hundred dollars."

Kennedy v. Cal. Savings Bank.

"Liability of Shareholders in Foreign Corporations. —The contract of a shareholder is measured by the charter or constating instruments of the company of which he agrees to become a member. When a person agrees to become a shareholder in a corporation chartered by a foreign State, he must necessarily be held to contract with reference to all laws of the State which enter into the constitution of the company; and if the charter or incorporation Act of the company provides that its shareholders shall be individually liable to creditors, he will become individually liable to the same extent as any other member, not because he is bound by the laws of the State where the company was incorporated, but because he has voluntarily agreed to the terms of the company's constitution. On the other hand, if the constitution to which a corporator has agreed does *not* provide for individual liability to creditors, he cannot be charged with individual liability anywhere."

Morawetz on Corporations, Sec. 874.

"The only contract ever made by Van Santvoord, which has any bearing on the present issue, was that which he made on becoming a party to the Connecticut charter. That certainly did not make him a partner, either of the defendant Brainard, or of Mr. Redfield, the secretary of the company. He gave no power to either to contract for him, and no consent to be responsible for their tortious acts. His contract with the State of Connecticut was for immunity from personal liability. * * * No statute of that State, or of this, has been violated either by him or by the corporation. The fact is found, that his contract was that of a corporator, with immunity from personal responsibility. Even if the charter had been silent, he would not have been liable for the debts of the company, either there or here, unless by force of some statute depriving him of his exemption. [*Ex parte* Riper, 20 Wend 616; Seymour v. Sturgess, 26 N. Y. 134.] The boats of the company were not his boats. Its debts were not his debts. In the case of the Bank of Augusta v. Earl, the Chief Justice said: "Whenever a corporation makes a contract, it is the contract of the legal entity of the artificial being created by the charter, and not the contract of the individual members." [13 Peters 587.] In Connecticut the defendant was clearly entitled to protection. How does it happen that on one side of the State line he owns the property, which, on the other, belongs to the company, or that by crossing the New York boundary he assumes all the liabilities of the corporation? It is conceded that he was not a partner when the company kept an office in Connecticut. He has done nothing since, and nothing has been done by the corporation which changes in law their mutual relations."

Merrick v. Van Santvoord, 34 N. Y. 208.

Liability depends upon and is determined by the charter and statutes of the State which created the corporation.

Cook on Stockholders, Sec. 223.

This liability is recognized upon the theory that it arises from contract and is not penal in character, and depends upon the fact that the stockholder contracted with reference to the laws of the State of incorporation, and that those laws became part of his contract and are therefore the gauge of his liability. The contract is complete when the corporation is organized and a stockholder subscribes for stock and the California statute is unconstitutional, because it undertakes to add a new liability upon the part of the stockholder.

The act of a corporation in coming into California to do business, is not the act of a stockholder. He may or may not have consented to it, but under the terms of Section 322, if it be valid, a stockholder would be liable in either case, or even in case he had protested against doing business in this State, and had been overruled by a majority of the stockholders.

It is true that the legislature of California has the power to impose the conditions upon which a corporation can do business in California, but that is a power relating only to liability or duties imposed upon the corporation itself, and does not include a power to create new liability or change the relations between the corporation and its stockholders, or between creditors, whose rights arise through the corporation and the stockholders.

Will it be contended that the legislature of a State could authorize a foreign corporation doing business in the State, to assess its stock and sell the same for the assessment or recover the amount of the assessment by suit?

Yet such a statute would not impair the obligation of the contract any more than a statute which creates a liability which the original contract did not include.

The principle that a State can impose conditions upon a corporation of another State coming within its

borders, to do business or even forbid such corporations to do business within a State, is one which has no bearing upon the proposition at issue in this case. The conditions that may be imposed and the regulations which can be enforced under that rule of law, are such as affect the corporation itself which is an artificial being created by an act of incorporation, but such regulations and conditions cannot create liabilities which will affect stockholders other than those contemplated by the laws under which the corporation was organized. For instance, the legislature of the State of California might provide, that every foreign corporation doing business within the State, should pay a certain amount into the State Treasury and that the proper officials might maintain an action for the recovery of that amount from such corporations, but certainly it cannot be claimed that a similar statute providing for the recovery of any amount from the individual stockholders of a foreign corporation would be valid.

The act of the corporation in coming into the State of California to transact business was not the act of the stockholders, nor can it in any way effect their relationship to the corporation, or its creditors.

"Whenever a corporation makes a contract it is a contract of the legal entity of the artificial being created by the charter and not a contract of the individual members."

Bank v. Earl, 13 Peters, 587.

"The corporation itself is a mere legal entity, existing only in legal contemplation, and is created for the convenience and benefit of the stockholders. All its dealings are for and on their account. It can contract no debts, except under the authority, express or implied, of the stockholders, and through their corporate agents."

Brown v. Hitchcock, 36 Ohio St. 678. Cited

with approval by the Supreme Court of California, in the case of Kennedy v. Cal. Savings Bank, 97 Cal. 96.

The liability, then if it exists, must be purely the creation of the statute.

We submit that such a liability cannot exist, or be enforced, because no statute can create the relationship of debtor or creditor without the consent of the debtor.

The inhibition against statutes which impair the obligation of contracts has received a very broad and liberal construction in a long line of decisions upon the subject.

"Upon this branch of the case, certain principles have been established by the Federal Supreme Court, and are no longer subjects of controversy. That court having paramount jurisdiction upon questions arising under the Constitution of the United States, we have only to ascertain what has been distinctly determined by it, and to apply those doctrines to the case before us. Thus it has been adjudged that an executed grant is as fully within the constitutional protection as an executory agreement. Hence, a conveyance which takes effect to transfer a title by the delivery of the instrument, cannot be revoked or impaired by State legislation. [Fletcher v. Peck, 6 Cranch 87, 136-139.] Then the provision is not limited to dealings between individuals, but extends equally to contracts between the State sovereignties and private parties; nor, in respect to contracts to which the State is a party, is it confined to such as relate to definite pecuniary obligations or to specific real or personal property. It embraces charters and grants of corporate powers and privileges, when conferred for private and pecuniary objects. [Dartmouth College v. Woodward, 4 Wheat. 518; Green v. Riddle, 8 *Id.*, 2; Gorden v. The Appeal Tax Court, 3 How., 133; State Bank of Ohio v. Knoop, 16 *Id.*, 369; Dodge v. Woolsey, 18 *Id.*, 331.] And it also applies to corporations created under general laws. Such statutes are considered as proposi-

tions extended to private citizens; and when they are accepted and a corporation has been organized pursuant to their provisions, a contract between the State and the private adventurers is created, which is equally invoilable as the terms of a charter granted by special statute."

In the matter of Oliver Lee & Co.'s Bank, 21 N. Y. 14.

"The contract among the shareholders cannot be impaired. The purposes of a corporation cannot be altered. Whatever doubt there may be as to the correctness of the doctrine that a charter of incorporation embodies a contract between the State and the corporators, there can be no doubt that the charter of an ordinary business corporation embodies a contract among the corporators themselves. The shareholders of such a corporation mutually agree to unite for the purposes indicated in their charter. Each shareholder agrees to contribute his proportionate share of the capital of the association, and each, in return, becomes entitled to a share in the profits and in the management of the corporate affairs. The agreement thus created is, in the strictest sense of the word, a contract; and every reason exists for treating it as a contract within the meaning of the provision of the Constitution of the United States, that no State shall pass any law impairing the obligation of contracts."

Morawetz on Corporations, Sec. 1047;
See also *Id.*, Sec. 1044, 1045;
Farrington v. Tenn., 95 U. S. 679;
White v. Hart, 13 Wall. 647;
Hoffman v. City of Quincy, 4 Wall. 550.

"As the law enters into the contract, and forms a part of it, the obligation of such contract must depend upon the law existing at the time the contract was made. The contract being then complete and operative, the legislature cannot, by a subsequent act, impair its obligation by requiring the performance of other

conditions, not required by the law of the contract itself."

Robinson v. Magee, 9 Cal. 84.

"The power to impose conditions after contract is once completed and perfected, is nothing but a power to impair its obligation and this the constitution has prohibited."

McCanley v. Brooks, 16 Cal. 33;
Rose v. Estudillo, 39 Cal. 274;
Bates v. Gregory, 89 Cal. 393.

In the case of a corporation, the only relation between the stockholders and the creditors is that which arises by reason of the acts of the corporation. The latter is the agent of the stockholders and its actions are binding upon them only in so far as they are authorized by the articles of incorporation, and the statutes under which the corporation is organized.

When the legislature of a State, other than the one in which the incorporation was made, undertakes to establish an additional relation between the creditors of the corporation and its stockholders, it makes a new contract, and imposes new obligations without the consent of the stockholders.

The court in this case found that "the Los Angeles Iron & Steel Company, was a corporation organized on the 8th day of March, 1893, and incorporated under the laws of the State of Colorado; and that the seventh provision of its articles of incorporation is as follows, to-wit: The said company is created for the purpose of carrying on part of its business beyond the limits of the State of Colorado, and the principle office of said company in the State shall be kept at the city of Denver, Arapahoe county, and the principal plant and principal operations of said company beyond the limits of the State shall be in Los Angeles county, State of California, and such other places in the State of Cal-

ifornia as may be decided upon by the board of directors. The principal business of said company in the State of Colorado shall be carried on in Arapahoe county.

"That the defendants are and were at all times herein mentioned residents and citizens of the State of California."

But those facts cannot affect the constitutionality of the provisions of the Civil Code of California in question. Neither the residences of the stockholders, nor the purposes of the corporation can give validity to an Act, which would otherwise be void.

The theory that if citizens of a State go into another State to incorporate a company for the purpose of doing business within the State of their residence, the corporation will be treated as fraudulent, and as a partnership, while it finds some support in the early cases has been overthrown by the later cases, and the modern doctrine is well established that such corporations are recognized by comity, and the stockholders treated in the same manner, as if they were residents of the State of incorporation.

"The second ground upon which the liability of the defendants, as partners, is claimed to arise is, that the company, although it may have a legal existence in Kentucky, has, and can have, no such existence in Ohio; that its incorporation in the former State to conduct a business beyond its limits, and within Ohio, is a fraud upon our laws, because the stockholders are not, by the laws of Kentucky, individually liable to any extent for the debts of the corporation. How this fact, if true, in the absence of a statutory regulation, operates to make the defendants liable on a promise they never made, either expressly or impliedly, it is difficult to understand. It is not doubted, that a State may forbid a foreign corporation from exercising corporate powers within its limits, or may lay such restrictions upon their exercise as will prevent it, except

on condition that the stockholders become bound for the debts of the corporation. But the mere circumstance, that, by the laws of the State by which the corporation is created, the stockholders may not be individually liable, to any extent, for the debts of the corporation has never been deemed a sufficient ground for the exclusion of the company from exercising its corporate powers within this State."

Bank v. Hall, 35 Ohio, 166;

"While the fact that citizens of Rhode Island go to Kentucky for an act of incorporation is one that naturally excites curiosity, if not suspicion, as to the motives and good faith of the concern, yet so long as it pursues a lawful business, and violates no law of this State, we do not see how we can refuse to recognize it. True, the advantages of yearly statements and liability of stockholders, given the creditors under our statute, are wanting; but that is a matter for those who deal with the corporation to consider. We can hardly deny the right of a foreign corporation to do business in this State, upon considerations of public policy, when our own statutes (Pub. Laws, c. 1200) expressly provide for corporations formed in this State for carrying on business out of the State."

Oakdale Mfg. Co. v. Garst, 28 Atlantic Rep. 974.

"The truth is, foreign corporations are not properly to be regarded with suspicion, nor should unnecessary restraints be imposed upon their doing business in our midst. They carry no black flag, and the policy of all civilized nations is to grant them recognition in their courts. It seems to me that every reason which urges upon us the recognition of foreign corporations organized with power to do business in our State and composed of citizens of the foreign State, is equally potent when the foreign corporation is composed of our own citizens. It has always been supposed that a State should at least deal as liberally with its own citizens as with those of foreign States. If, therefore, we permit foreign citizens to come within our limits in the form of a foreign corporation organized with power to do business here and recognized by us, why

should we not permit our own citizens to avail themselves of the like privilege? If we impose terms and conditions upon foreign corporations, as such, doing business here, those same terms and conditions still and equally apply to a foreign corporation when composed of our own citizens. Why should they not be placed at least upon an equality with the foreign citizen?"

Demarest v. Flack, 128 N. Y. 219.

"Before approaching the discussion of the principal question in this case, certain questions of subordinate importance may be disposed of, which have been raised upon the argument. One of them relates to the right of this corporation to recognition in our courts, as affected by the fact that the incorporators are, with one exception, citizens and residents of this State. Whatever inferences can be drawn as to the motives which took them into a foreign jurisdiction to organize a corporation under its laws, I agree with the general term that any such question has been once and for all settled by our recent decision in the case of Demarest vs. Flack, (128 N. Y. 205.) It appeared in that case that citizens of this State, incorporated under the laws of West Virginia, to carry on a certain business, with the principal office of the company in New York City, where only it had been conducting its operations. It was claimed that these facts invalidated the corporation, and that there was a manifest evasion of, and fraud upon the laws of the State. But it was held that they constituted no reason for refusing recognition to the corporation; that there was no essential difference between a corporation formed under the laws of a foreign State, the members of which were its own citizens, and one so formed, the members of which were citizens of our own State. If our citizens are attracted to other jurisdictions for purpose of incorporation, because of more favorable corporation or taxation laws, I cannot see in that fact, however, and in whatever sense, to be deplored, any reason that they should be prevented from employing here the corporate capital in the various channels of trade or

manufacture. That, as it seems to me, would be a rather hurtful policy and one not to be attributed to the State."

Lancaster v. A. I. Co., 140 N. Y. 582.

The theory of the earlier cases that a corporation could do no business outside of the State in which it was organized, fell, because in conflict with the necessities for the development of trade and commerce, which made it that corporations should be able to transact business in various States and countries.

If the Los Angeles Iron & Steel Company had no right to do business in the State of California, its contracts were void and its stockholders cannot be held for the liability arising therefrom.

If it had the right to do business in the State of California, it did so as a Colorado corporation recognized by the comity of States and the liability of its stockholders, must be determined by the laws of Colorado in which it was incorporated.

It is to be regretted that the amount involved in this case was not sufficient to give jurisdiction upon appeal to the Supreme Court of California, so that the principles which were involved might have first been submitted to the Supreme Court of this State, before going to the Supreme Court of the United States. The question involved is similar, however, in some degree to that in the case of McGowan v. McDonald, 111 Cal. 57, in which the court seems to hold that the point raised, that the provision for the liability of stockholders impaired the obligations of the contract, would have been well taken as to the corporation mentioned in that case if the power to alter and amend the laws with reference to corporations had not been reserved to the legislature by the Constitution of 1849. But in the case of a corporation organized in another State the legislature of California has no reserved power,

and no right therefore, to impose any additional obligations upon the stockholders of such corporation.

Although the amounts involved in this case are small, the matter to be decided is one of far reaching importance because it involves a determination of the power of the States to impose liabilities upon the stockholders of foreign corporations.

If it be held that such power exists the stockholders of every corporation will be in constant danger of having individual indebtedness created for them without their knowledge or consent, corporate business will be hampered by the overthrow of the primary principle upon which such organizations rest, and the shareholders of corporations transacting business throughout the United States will have personal burdens imposed upon them as varied, as the ingenuity of political theorists in forty-five States can devise.

We respectfully submit that for all of the reasons above given the judgment should be reversed.

J. W. McKinley,
Attorney for Plaintiff in Error.

M. L. Graff, *of Counsel.*

IN THE

SUPREME COURT

OF THE

UNITED STATES.

H. L. Pinney et al.,
Plaintiffs in Error.

vs.

R. T. Nelson,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

The brief for plaintiffs in error does not present a statement of the case in conformity with Rule 21. It does not purport to set forth any of the facts showing "the manner in which the questions involved are raised." This court is thus asked to determine, as an abstract question of law, and without reference to any facts of time, place or parties, the power of the state of California to enact the last clause of section 322 of the Civil Code of that State. In other words, the question plaintiffs in error would have determined here is not as to the enforcement or operation of said statute—whether as to themselves it is constitutional, but as to the power of the State to enact the statute at all—whether it can, under any circumstances, be

constitutionally enforced against any person. But this broad question will not be considered or answered by this court, until plaintiffs in error show themselves in a position to raise it, and they can do this only by setting forth the facts, relating to themselves, and which show the statute to be in conflict with their constitutional rights.

> "*Prima facie*, and upon the face of the act itself, nothing will generally appear to show that the act is not valid, and it is only when some person attempts to resist its operation and calls in the aid of the judicial power to pronounce it void, as to him, his property or his rights, that the objection of unconstitutionality can be presented and sustained. Respect for the legislature, therefore, concurs with well established principles of law in the conclusion that such an act is not void, but voidable only; and it follows, as a necessary legal inference from this position, that this ground of avoidance can be taken advantage of by those only who have a right to question the validity of the act, and not by strangers."

Cited by *Cooley Con. Lim., 6th Ed. p. 197.*

We regret that the learned counsel for plaintiffs in error has not seen fit to particularize, either in his statement or his assignment of errors, the manner in which the constitutional rights of these particular stockholders in the foreign corporation in question have been violated by enforcing against them a statute which declares them to be liable for the payment of a small portion of the defendant in error's just claim against their *alter ego*—the "legal entity of the artificial being," endowed by the law of its organization with power to transact *their* business for them. Counsel's failure to do so, not only suggests the suspicion that his clients' "constitutional rights" are exhibited more propitiously in the abstract

than in the concrete, but also devolves upon us the necessity of setting forth a "concise abstract" of those facts which make up the case, including the material findings of the court below, and admissions of the pleadings, of which, under the state practice, findings were not necessary [*Gruhn v. Stanley, 92 Cal. 88*] and some matters also, of which the court below took judicial notice.

1. It appears that the statute in question, 322 of the Civil Code of California, was enacted March 17, 1876, and that the particular part attacked in this case as unconstitutional has never been construed in any manner by the Supreme Court of California.

2. That Article XII, Sec. 15 of the Constitution of California, adopted in 1879, is as follows:

> "No corporation organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State."

This section declares the public policy of the state of California toward foreign corporations [*Williams v. Gaylord, C. C. A., 102 Fed. Rep. 375*]. And, being adopted subsequently, it reinforces section 322 of the Civil Code.

3. Section 3 of Article XII of said constitution provides:

> "Each stockholder of a corporation, or joint stock association, shall be individually and personally liable for such portion of all its debts and liabilities," etc.
>
> And section 4 of the same Article defines corporation as used in the Article, and says it "shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations, not possessed by indi-

viduals or partnerships." This clearly included foreign corporations doing business in this State.

4. The Los Angeles Iron & Steel Co. was incorporated March 8, 1893, under the laws of Colorado, which laws do not provide for any individual liability of stockholders for corporate debts. [Tr. fols. 22 and 24.]

5. The 7th provision of its articles of incorporation is as follows:

> "The said company is created for the purpose of carrying on part of its business beyond the limits of the state of Colorado, and the principal office of said company in the state shall be kept at the city of Denver, Arapahoe county, and the principal plant and principal operations of said company, beyond the limits of the state, shall be in Los Angeles county, state of California, and such other places in the state of California as may be decided upon by the board of directors." *Tr. fol. 24.*

6. That the plaintiffs in error became stockholders in said corporation while they were residents and citizns of the state of California. And they continued to be such at all times mentioned. [*Tr. fols. 1 and 24.*]

7. That said corporation did business in the state of California, while plaintiffs in error were stockholders, and in so doing incurred indebtedness to defendant in error and his assignors, by contracts made, executed and to be performed, and which were performed on the part of defendant in error and his assignors, in the state of California. [*Tr. fol. 24.*]

8. Said indebtedness not having been paid, defendant in error brought suit September 30, 1898, against plaintiffs in error, among others, in the Justice's Court of Los Angeles city, California, upon their statutory liability as stockholders, and recovered judgment; whereupon, plaintiffs in error appealed to

the Superior Court of Los Angeles county, in said State, which, after due trial, on January 2, 1900, entered the judgment which is brought up in this record.

9. That said Superior Court is the highest State court from which a decision could be obtained in this case, and plaintiffs in error have brought said judgment up to the Supreme Court of the United States on writ of error to said Superior Court, and claim as the sole error that said Superior Court should have sustained the only defense they interposed to said suit, to wit, that the part section 322 of the Civil Code of California, upon which said judgment is based, is in conflict with certain provisions of the Constitution of the United States. [Tr. p. 1, c.]

ARGUMENT IN REPLY.

Counsel for plaintiffs in error insists that the provisions of the statute in question are inseparable and must be valid as to all stockholders in all foreign corporations doing business in the state of California, and that nothing in the facts of this case could affect the question. But as we understand it (without conceding at all any invalidity in the statute under any circumstances) the only question that can be raised here is whether or not the court below erred in deciding upon this record that this statute was not unconstitutional as to these plaintiffs in error in this case.

This court will always give a statute as much operation as possible. In *Chesapeake & O. Ry. Co. v. Ky.*, *179 U. S. R. 394*, where it was discussing the operation of the "separate coach" law for white and colored passengers as relating to the commerce clause of the Constitution, this court says: "If it were well settled that a separate coach law was unconstitutional, as applied to interstate commerce, the law applying on its face to *all* passengers should be

limited to such as the legislature were competent to deal with * * * and so construing it there can be no doubt as to its constitutionality."

> "A legislative act may be entirely valid as to some classes of cases, and clearly void as to others. * * * A law might be void as violating existing contracts, but valid as to all contracts which should be entered into subsequent to its passage, and which therefore would have no legal force except such as the law itself would allow. In any such case the unconstitutional law must operate as far as it can, and it will not be held invalid on the objection of a party whose interests are not affected by it in a manner which the constitution forbids."
>
> *Cooley Con. Lim., 6th Ed., pp. 213-4.*

It may not be improper here to notice that the State court of last resort has never had occasion to construe the provisions of the statute in question, and, so far as our researches have discovered, no other State has a similar provision, and no text-book writer has touched upon the precise question. It is, therefore, hardly proper in this case to presume or speculate as to what construction the State court would put upon the statute—whether it *would* construe it as applicable to *all* stockholders in *all* foreign corporations doing business in the state and for *all* liabilities of the corporation. It is sufficient to say here that it is obvious from the Kentucky case, and many others that might be cited, that this court will affirm the judgment unless it can clearly say the court below erred in applying the statute to these stockholders in this case. And that the statute can be construed as separable, if it should be necessary so to construe it, in order to give it constitutional operation, when the facts arise which require such a construction.

We think a *seriatim* examination of the assign-

ments of error will bring us directly to the logical conclusion upon the facts which must determine the decision of this court.

THE FIRST ASSIGNMENT OF ERROR.

The facts do not bring the statute in question, so far as the rights of plaintiffs in error are concerned, within the operation of the "obligations of contracts" clause of the Constitution. In the very nature of things no federal question is raised by the facts under the first general assignment of error.

> "Every charter of a corporation having a capital stock forms the basis of three distinct contracts. The charter is a contract between the state and the corporation; second, between the corporation and the stockholders; and third, between the stockholders and the state."
>
> *Cook S. & S., 3d Ed., Secs. 492-5 and 6.*

While counsel's brief is not specific in pointing out which of these contracts his clients have assumed obligations or acquired rights under, that are impaired by the statute, it is self-evident that the first assignment of errors must fail as to any one of them; for the statute had been unquestioned law in the state of California for at least fifteen years before any one of these charter contracts of the Los Angeles Iron & Steel Co. had any inception. It would seem to need no argument or authority to show that whatever objections *might* be urged, the objection that a statute impairs the obligations of their contract cannot be urged by persons either contracting within the jurisdiction of the statute, or voluntarily entering within the jurisdiction of the statute in the performance of their contract, or in the enjoyment of benefits of their contract, many years after the enactment of the statute.

We have been unable to find a single case decided

by this or any other court, where this clause of the Constitution has been invoked to annul a statute passed before the contract was *in esse* either as an executed or executory obligation, express or implied. The limitation can apply only to obligations of contracts existing at the time the law is enacted. It is an inhibition against laws retroacting upon past transactions in any manner that would impair vested rights. The conclusion reached by counsel *a priori* as to the necessary effect of the statute to impair obligations of contracts generally of all stockholders in all foreign corporations, must involve a *non sequitur* when applied to stockholders of a corporation not chartered or having any inception until long after the statute was enacted.

> "Obviously, this clause cannot be invoked for the reversal of the judgment below. It is equally clear that the law of the state to which the Constitution refers in that clause must be one enacted after the making of the contract, the obligation of which is claimed to be impaired. * * * It cannot, however, with propriety, be said that the obligation of a contract made with the state in 1874 was impaired by statutes enacted in 1867."
>
> *Lehigh W. Co. v. Easton*, 121 U. S. R. 391.

We submit that there is no direct showing, and no grounds for a clear inference, in this record, that the plaintiffs in error ever made any contract, the obligations of which would or could be impaired, within the meaning of the Constitution, by the enforcement of the statute before us, even waiving, for sake of argument only, the date of the enactment of the statute.

> "The obligation clause never has been understood to embrace other contracts than those which respect property, or some object of value,

and confer rights which may be asserted in courts of justice."

Dartmouth College v. Woodward, 4 Wheat. 629.

"For, at the threshold of all cases of this kind, this court must ascertain whether there is any such agreement on the part of the state as constitutes a contract, within the meaning of the Constitution of the United States."

Louisville Gas Co. v. Citizens Gas Co., 115 U. S. R. *692.*

It was stipulated [*Tr. fols. 19 and 22*] that there was no statute in Colorado providing that stockholders shall be liable for any portion of the indebtedness of the corporation; but there is not even an intimation in the record that there was any binding obligation of contract with the state of Colorado, or with any person, vesting in these plaintiffs in error the right to become, or to continue to be, owners of stock of the Los Angeles Iron & Steel Co., without ever becoming, or being made by statute, liable for any portion of the indebtedness of that corporation thereafter contracted. Suppose they were not liable at the time they became stockholders, *non constat* that they should never be made liable by statute for liabilities incurred by the corporation after the statute was passed. There is nothing to show that Colorado could not have enacted a statute making them liable thenceforth; and if Colorado was not bound with an inability to enact the law surely California was not.

We are mindful of the rule laid down in *Hanley v. Donoughue, 116 U. S. 1*, and know that this court does not take judicial notice of any of the laws of Colorado except those in evidence before the court below, and we ask counsel to keep within the same rule. His argument, based upon the proposition that

the laws of Colorado entered into and became a part of the charter contracts of this corporation, to have any force or application here, must assume without evidence upon which to base it, that some of the laws of that State created a binding obligation which these plaintiffs in error have a right to stand upon as against the operation of this statute of California. This court has often repeated what it says in *Munn v. Illinois*, *94 U. S. R. 123*, that, "Every statute is presumed to be constitutional." And by Marshall Ch. J. in *Fletcher v. Peck*, *6 Cranch 87*, *128*: "The question, whether a law be void for its repugnancy to the constitution, is at all times a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative, in a doubtful case." These are the presumptions which counsel must face here, and they cannot be overcome by inferences from other assumptions of fact. It devolved upon plaintiffs in error to show clearly and affirmatively that they contracted, when they became stockholders in this corporation, solely with reference to the laws of Colorado, and that such laws secured to them an exemption from ever being made liable for any indebtedness of the corporation. Having failed to show that they did so, no presumption will be indulged here that they did so. In fact, if any presumption should be indulged, it will be that arising from the historical fact in constitutional jurisprudence that nearly all, and perhaps all, the States now have the reserve power to amend, alter or change corporate charters, granted by themselves. If the Colorado constitution and laws reserved this power, at the time of the granting of the charter of this corporation, there was no contract that could be impaired by the enactment and enforcement of a statute declaring stockholders liable upon debts of the corporation thereafter contracted; and, on the other hand, if this

reserved power did not exist in the state of Colorado, it was incumbent on plaintiffs in error to prove it as part of their case.

THE SECOND ASSIGNMENT OF ERROR.

Counsel embraces three subdivisions in his second general assignment of errors, by quoting the words of Sec. 1 of Article XIV of the Constitution. But there seems to be no attempt to show that some of these provisions have any relevancy here. This is true of the first of the subdivisions, and in the absence of any discussion by counsel, it is only necessary to say that no "plain error" appears in the decision of the court below, in so far as that decision finds that this statute does not abridge any of the privileges or immunities which these plaintiffs in error are entitled to enjoy as citizens of the United States.

The second subdivision also is not particularly discussed, but on page 9 of the brief we find the only specification of the manner in which counsel claims the statute to offend against the declaration—sometimes referred to as "the last resort of a desperate cause"—that "no state shall deprive any person of life, liberty or property, without due process of law." There is and can be no suggestion that this statute deprives any person at all of life or liberty; but on the page of the brief mentioned we learn that it takes property without due process of law, "because it subjects the stockholder to liability upon a contract made without his consent, and without giving him an opportunity to be heard." Counsel does not undertake to say that such is the effect upon these plaintiffs in error, and until he has said so, and pointed out the manner of it, this question is not raised here. And a glance at the facts demonstrates with mathematical certainty that such is not the effect of the enforcement of the statute upon these plaintiffs in error.

They are declared to be liable for a portion of the indebtedness the Los Angeles Iron & Steel Co. incurred by contracts made with the defendant in error and his assignors. The construction given by the state court to the statute, as applied to domestic corporations, if applied here, would show that concomitantly with the creation of the liability of the corporation an independent, separate liability for a portion of the whole liability was created and became due from each stockholder. The same acts in making the contract created at the same time both liabilities, and the two rights of action accrued to defendants in error at the same time. [*Hyman v. Coleman*, 82 Cal. 650, and cases cited therein.] The State court has also construed the stockholders' liability, so far as domestic corporations are concerned—as counsel himself abundantly shows—to be contractual. Now, if plaintiffs in error are liable, "the same" as though the corporation were a domestic corporation, all these decisions must also contain the construction of the statute which upholds their liability. We stand squarely upon the whole of section 322 of the Civil Code and all the decisions of the Supreme Court of California applying it. And what are the facts showing that this liability was not imposed upon them without their consent, and how were they given the opportunity to be heard, just so much as, and in the same sense as stockholders in domestic corporations?

First: If the contract by which the corporation created a liability resting upon itself was *intra vires*, the liability devolving upon plaintiffs in error rests upon the broad ground of contract, just as fully as counsel shows to be the foundation of the "ordinary stockholder's liability." Plaintiffs in error subscribed to articles of incorporation, which declare the express purpose of the corporation to do business in California —waiving the very name chosen for the corporation

—its articles say, "the principal plant and principal operations * * * shall be in Los Angeles county, California." We need not enlarge upon the argument that when they subscribed to articles of incorporation containing that provision, or purchased stock issued thereunder—not to mention other matters evident in this record—it is clear that they expressly agreed that this corporation could and should do business in California; and, therefore, could and should make all *intra vires* contracts incident to the carrying on of that business. And surely if they agreed to the making of the contract in the State—even waiving the fact that they were citizens of the State—they must also be held to have agreed to all the personal liabilities which the expressed law of the State there declared to be inseparable incidents to the making of the contract. And, as stockholders in a corporation, these plaintiffs in error knew that the corporation was but a legal entity to represent themselves; that its board of directors was their expressly authorized agent to do the business and perform the acts as a result of which a liability was imposed upon them. In one sense of the term — and counsel evidently argues upon it in this sense—a stockholder may not consent to the making by the corporation of a particular contract. He may even do all in his power to prevent it, but if the corporation makes the contract, and it is not *ultra vires*, and the creditor dealing with the corporation under the contract parts with his property in good faith and afterwards seeks to recover in part by enforcing that stockholder's liability, his non-consent to that particular contract is no defense. In the very nature of corporate organization, stockholders are conclusively presumed to assent to all *intra vires* acts of the corporation. It must be so or there could be no safety in dealing with corporations. When a man

becomes a stockholder in a corporation he agrees as to all the world that he will accept any liabilities re-resulting from or growing out of the proper acts of the corporation that are declared by the law of the place where the corporation acts to be incident to his ownership of the stock. This agreement is more fundamentally a part of his contract than are the various provisions of the law of the State issuing the charter, which, it is conceded, do ordinarily enter into and become a part of his contract. But conceding this does not concede, what is necessary to counsel's point, that such laws *exclusively* constitute the charter contracts of stockholders. There are other elements entering into such contracts, and the consent to be bound by the regular acts of the controlling authority in the corporation is fundamental.

The stockholder has his opportunity to be heard in the regular way by which alone the individual can influence the actions of the corporation. These plaintiffs in error had those opportunities. and while nothing appears in the record intimating any want of their consent to the making of the contract by which this corporation became indebted to defendant in error, it is apparent that had they expressed dissent the contract would nevertheless have been made legally with their consent. They gave their consent, irrevocable so long as they owned their stock, when they accepted the charter. And all the rights which they now claim to be obligations inseparably connected with the corporate charter by virtue of the laws of the State granting it, were expressly declared in the charter itself to be dependent on a continuing use of corporate functions under the protection of the same body of laws which contains the provisions imposing the burden of a liability upon them. Surely an expressed consent to the operation of one legal authority is superior to what may be termed an infer-

ential or implied consent to some other. At any rate, they have manifested their consent to the operation of the statute under such circumstances that every element of an estoppel is available against them in favor of this defendant in error, who gave credit to the corporation, in good faith, relying upon the assumption that this corporation and all its stockholders were consenting to the full force of the laws of this State.

Second. It affirmatively appears that in this case it was not *ultra vires* for this corporation to do business in California, but counsel contends that the statute is unconstitutional because if applied to enforce a liability in a foreign corporation not organized to do business in California, as against a stockholder who did not consent to its doing business here, it would be making such stockholder liable in a manner to which he had never given any consent, direct or implied. A sufficient reply to this suggestion is that the facts here do not bring such a case before the court; and, moreover, the stockholder in such a case has his defense under this very statute, and in a proper case the courts of the State would say that the *ultra vires* acts of the corporation created no liability against the stockholder who had not assented thereto. But if the stockholder had manifested his consent, or if there were matters of estoppel against him, he would then have no constitutional right to object. The statute in no manner abridges the stockholder's right to make any defense he may have before the liability can be enforced against him. Of course, the law is made for the normal acts of the corporation, and the power of the State to enact the law can not be measured by the possible effects of its application in some abnormal case involving questions of *ultra vires*. These may well be left to the courts till they arise, when they can and will be decided in the light

of the particular facts. The stockholder ordinarily has a remedy for the *ultra vires* acts of the corporation.

This term "due process of law" has received frequent construction and application by this court, and it is not necessary to concede that in a clear case this court will not hesitate to annul a statute or to set aside an act done under judicial or executive authority, which infringes in any particular upon this constitutional limitation, but in *Davidson v. New Orleans, 96 U. S. 104*, it is suggested that it is probably better "to leave the meaning to be evolved by the gradual process of judicial inclusion and exclusion, as the cases presented for decision shall require, with the reasonings on which such decisions may be founded." Many cases have been decided since this principle was announced, but counsel does not find one that fits the facts here; and we submit that he has not made it apparent how this case comes within the general lines of the reasoning of any of the decided cases. We have looked at Webster's famous definition of the term, and we cannot see how this statute is opposed to any element of "the general law." While it is certainly clear that any tribunal in which the liability under the statute is to be investigated, shall "hear before it condemns," and shall "proceed upon inquiry," and shall "render judgment only after trial." Plaintiffs in error have no constitutional right to require more.

The third subdivision of the second assignment of errors also counsel abandons, and we only stop to remark that well he may. For no argument is necessary to show that this statute was intended to secure, and that it is most efficacious in securing to all persons within the jurisdiction of California the "equal protection of her laws." A mere statement of the law,

together with this constitutional provision, is to show no conflict can exist between them.

THIRD ASSIGNMENT OF ERROR.

The third general assignment of error is but a restatement of the first two, and needs no separate consideration.

THE STATUTE IS CONSTITUTIONAL.

We have thus far examined the statute specifically in the light of the several assignments of error, and in closing we desire to set forth some of the grounds upon which, we think, the statute can rest as being strictly within the just range of legislative discretion.

The statute sets forth a condition under which foreign corporations can do business here. The public policy of the State, as expressed in its Constitution, publishes the condition. Counsel ostensibly admitting the power of the State to impose conditions upon foreign corporations doing business within its borders, yet in fact denies that power, except as to conditions precedent imposed directly upon the corporation itself. But this restriction of the power cannot be sustained by any of the host of decisions of this court discussing the power.

"A foreign corporation can claim a right to do business in another state to any extent, only subject to the conditions imposed by its laws.

> As said in *Paul v. Virginia, 8 Wall. 168, 181:* 'The recognition of its existence even by other states, and the enforcement of its contracts made therein, depend purely upon the comity of those states—a comity which is never extended where the existence of the corporation, or the exercise of its powers, is prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other states, but depending for such recognition, and the enforcement of its contracts upon their assent, it follows, as a

> matter of course, that such assent may be granted upon such terms and conditions as those states may deem proper to impose.'

This doctrine has been so frequently declared by this court that it must be deemed no longer a matter of discussion, if any question can ever be considered at rest.

Only two exceptions, or qualifications, have been attached to it in all the numerous adjudications in which the subject has been considered, since the judgment of this court was announced more than half a century ago in *Bank of Augusta v. Earle, 13 Pet. 519.* One of these qualifications is that the state cannot exclude from its limits a corporation engaged in interstate or foreign commerce, established by the decision in *Pensacola T. Co. v. W. U. Tel. Co., 96 U. S. 1, 12.* The other limitation on the power of the state is where the corporation is in the employ of the general government, an obvious exception, first stated, we think, by the late Mr. Justice Bradley, in *Stockton v. Baltimore & N. Y. R. Co., 32 Fed. R. 9, 14.* * * * No individual member of the corporation, or the corporation itself, can call in question the validity of any exaction which the state may require for the grant of its privileges. It does not lie in any foreign corporation to complain that it is subjected to the same law with the domestic corporation."

> *Horn Silver Mining Co. v. State of N. Y., 143 U. S. 314-5.*

It should be noticed that the court in the above case was not discussing a license for permission to do business in the state, but a tax levied upon the entire capital stock of a foreign corporation doing business in the state, and it is said the tax imposed and under discussion was "one of the conditions under which the foreign corporation was allowed to do business there."

The same principle is laid down in the broadest terms by most eminent text writers.

Cook on Stock and Stockholders, section 694, says: "A state legislature may exclude foreign corporations from doing business within its borders, or impose such terms, conditions and restrictions as it may see fit."

"*Morawetz*, at Sec. 973, says: "The limits of the constitutional powers of a state over a corporation formed in another state, can best be determined by regarding the corporation in its true light, as an association of individuals, rather than as a fictitious person or entity. * * * Most of the constitutional limitations upon the powers of the states are imposed for the benefit of all persons throughout the United States, irrespective of citizenship. The shareholders of the corporation are, therefore, entitled to the benefit of these provisions, without regard to their citizenship or the jurisdiction in which their association was formed."

In Paul v. Virginia, *8 Wall. 181*, this court directly declares that the State "may exact such security for the performance of its (the foreign corporation's) contracts with their citizens as in their judgment will best promote public interest. The whole matter rests on their discretion."

If the States can exact property security from the foreign corporation, by parity of reasoning, the conclusion is inevitable that they have the power to exact other security in the shape of the obligations of the stockholders. And if the State have the power to exact penalty from the agent of the foreign corporation, under a penal statute intended only, of course, for the monied protection of the creditors or of the people, why, then, can it not, by parity of reasoning,

provide that the stockholders of the foreign corporation shall be liable in the monied way?

It is also said in *Paul v. Virginia*, p. 181, "That special privileges which are conferred must be enjoyed at home, unless the assent of other states to their enjoyment therein be given; and that a grant of corporate existence was a grant of special privileges to the corporators, enabling them to act for certain specified purposes as a single individual, and exempting them, unless otherwise provided, from individual liability, which could therefore be enjoyed in other states only with their assent."

In the case of *People v. Fire Association of Philadelphia, 92 N. Y. 311*, the court said the State "meets the applicant on the border forbidding admission, as it has a right to do, except on the condition that it will fulfill all requirements of our statutes relating to foreign corporations, one of which is the very law here assailed. When the corporation comes in, it agrees to the conditions. They become binding by its assent. * * * We may exclude absolutely, and in that power is involved the right to admit upon such conditions as we please. * * * Must comity become magnanimity or injustice, if we owe courtesy to sister states, do we not owe protection to our own corporations, formed and fostered under our law? Is it vicious to insist for them upon precise equality of treatment? These questions our legislature answered. The inquiry was within the just range of their discretion."

In *Hooper v. California*, 155 *U. S.* 656, it is said: "The power to exclude embraces the power to regulate, to enact and enforce all legis-

lation in regard to things done within the territory of the state, which may be directly or incidentally requisite in order to render the enforcement of the conceded power efficacious to the fullest extent."

These decisions leave but the one question, and that only partially open, to wit: Do the provisions of the statute before us constitute a "condition" in the sense in which that term is used in said decisions, operating upon foreign corporations doing business in this State. As we have said, there being no such enactment by any other state, as the statute in question, we could scarcely hope to find an adjudication, which in terms adopts the phraseology of the California law and says the state has the power to enact and enforce it; but we think the language of the foregoing decisions is in such clear and broad terms that no doubt can be entertained of the application of those adjudications, and the principles announced therein to the facts involved in this controversy.

Cases have arisen (among them we find two cited and quoted from by counsel), in which it was sought to enforce a liability upon stockholders in foreign corporations analogous to the liability imposed by this statute, but where there existed no such statute upon which to rest the liability. It is needless to notice, as counsel has himself shown, that the courts denied the existence of any such liability. But in each case the decision rests upon the absence of such a statute as we have here.

In *Merrick v. Van Santvoord, 34 N. Y. 208*, page 14 of plaintiffs' brief, we find the following expressions used by the court: "No statute of that state, or of this, has been violated either by him or by the corporation." * * * "Even if the charter had been silent, he would not have been liable for the debts of the com-

pany, either there or here, UNLESS BY FORCE OF SOME STATUTE depriving him of his exemption." Also in *Bank v. Hall, 35 Ohio 166*, page 20 of the brief, is found the following: "How this fact, if true, IN THE ABSENCE OF STATUTORY REGULATION, operates to make defendants liable on a promise they never made, either expressly or impliedly, it is difficult to understand."

And in the same opinion we find the following, although a dictum, containing a clear expression of the mind of the Ohio tribunal upon the question involved, and being the only direct statement of the principle contended for herein which we have been able to find in any opinion or text book:

> "It is not doubted that a state may forbid a foreign corporation from exercising corporate power within its limits, or may lay such restrictions upon their exercise as will prevent it, EXCEPT ON CONDITION THAT THE STOCKHOLDERS BECOME BOUND FOR THE DEBTS OF THE CORPORATION."

We submit that the statute is not only entirely without the constitutional limitations specified, but that it is a just and proper exercise of legislative discretion; that no association of persons desiring to do business in California as a foreign corporation should have any objection to doing it under the conditions the statute imposes; and that no stockholders in a foreign corporation organized to do business in California ought to be heard to complain of the burden of a condition which they accepted in order to enjoy the advantage of reaping possible benefit. Therefore the judgment should be affirmed.

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EDWARD W. FORGY,
Attorneys for Defendant in Error.

J. A. ANDERSON,
Of Counsel.

Supreme Court of the United States.

No. 65.—October Term, 1901.

H. L. Pinney, C. L. Pinney, W. C. Patterson, and Thomas Brooks, Plaintiffs in Error, vs. R. T. Nelson.	In error to the Superior Court of the County of Los Angeles, State of California.

[December 2, 1901.]

This was an action to enforce a personal liability of stockholders. It was commenced in a justice's court of Los Angeles City, Los Angeles County, California, on September 30, 1898, by the defendant in error against the plaintiffs in error. It was subsequently transferred to the superior court of the county, where a trial was had on January 17, 1900, before the court without a jury. A stipulation was signed as to the truth of various averments in the complaint and answer, which concluded as follows:

"And it is stipulated that the only question in this case is as to whether section 322 of the Civil Code of California is in violation of the provisions of the Constitution of the United States, and if it is in violation of such provisions defendants are entitled to judgment, but if said section is not in violation of said provisions, then plaintiff is entitled to judgment as prayed for in his complaint."

Findings of fact were also made, among which were the following:

"II. That the Los Angeles Iron and Steel Company was a corporation organized on the 8th day of March, 1893, and incorporated under the laws of the State of Colorado; that the seventh provision of its articles of incorporation is as follows, to wit: The said company is created for the purpose of carrying on part of its business beyond the limits of the State of Colorado, and the principal office of said company in the State shall be kept at the city of Denver, Arapahoe County, and the principal plant and principal operations of said company beyond the limits of the State shall be in Los Angeles County, State of California, and such other places in the State of California as may be decided upon by the board of directors. The principal business of said company in the State of Colorado shall be carried on in Arapahoe County.

"III. That the defendants are and were at all times herein mentioned residents and citizens of the State of California.

"IV. That all the indebtedness of said Los Angeles Iron and Steel Company to plaintiff and to plaintiff's assignors was created by contracts made, executed and to be performed in the State of California.

"VI. That at the time the said indebtedness was created and incurred by the said company there were issued of the capital stock thereof the number of 1,311 shares, and that the defendants were at said times the owners

respectively of the number of said shares as set opposite their respective names, as follows, to wit: H. L. Pinney, 50 shares; C. L. Pinney, 42 shares; W. C. Patterson, 35 shares; C. W. Damerel, 91 shares; F. E. Little, 22 shares; Thomas Brooks, 38 shares."

Upon the stipulation and findings a judgment was rendered in favor of the plaintiff. A writ of error was subsequently sued out from this to that court, it being the highest court in the State to which the action could be taken.

Article 12, section 15, of the Constitution of California, adopted in 1879, reads:

"No corporation organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State."

Section 322 of the Civil Code of California, as amended March 15, 1876, provides as follows:

"Each stockholder of a corporation is individually and personally liable for such proportion of its debts and liabilities as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion only of each debt or claim against the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders, for the proportion of his claim payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each, in conformity therewith.

"The liability of each stockholder of a corporation, formed under the laws of any other State or territory of the United States, or of any foreign country, and doing business within this State, shall be the same as the liability of a stockholder of a corporation created under the constitution and laws of this State."

By the stipulation above referred to the truthfulness of the following averment in the answer was admitted:

"Defendants allege that there is no statute of the State of Colorado providing that stockholders shall be liable for any portion of the indebtedness of a corporation, and allege that under the laws of the State of Colorado a stockholder in a corporation is not liable for any portion of the indebtedness of said corporation."

Mr. Justice BREWER delivered the opinion of the Court.

The plaintiffs in error rely upon the proposition that the liability of a stockholder is determined by the charter of the corporation and the laws of the State in which the incorporation is had. "If the constitution to which a corporator has agreed does *not* provide for individual liability to creditors, he cannot be charged with individual liability anywhere. (Morawetz on Corporations, 2d ed. sec. 874.)" They invoke the *lex loci*

contractus, and say that the stockholders' contract was made in Colorado, that being the State in which the Los Angeles Iron and Steel Company was incorporated; that by the laws of that State there is no personal liability of stockholders; that it is not within the power of California to change the terms of that contract, the Federal Constitution (Art. I, sec. 10) forbidding a State to pass a law impairing the obligation of contracts; that while California, which prescribes an individual liability of stockholders, may if it sees fit exclude every corporation of another State whose stockholders do not assent to such liability, yet if it fails to do so, and such Colorado corporation actually comes into California to transact business, such coming into the State and the transaction of business therein do not change the terms of the stockholders' contracts, or impose a personal liability; and also that in such a case an attempt to enforce the statutory provisions of California so far as to change the personal liability of corporators in the foreign corporation, is in conflict with the due process and equal protection clauses of the first section of the Fourteenth Amendment.

With reference to the contention that the law of California impairs the obligation of the contract of the stockholders, it is enough to say that that law, both constitutional and statutory, was enacted long before the incorporation of the Los Angeles Iron and Steel Company, and that therefore section 10 of Article I of the Federal Constitution has no application. "It is equally clear that the law of the State to which the Constitution refers in that clause must be one enacted after the making of the contract, the obligation of which is claimed to be impaired." (*Lehigh Water Co.* v. *Easton*, 121 U. S. 388, 391.) See also *Central Land Co.* v. *Laidley*, (159 U. S. 103, 111;) *McCullough* v. *Virginia*, (172 U. S. 102, 116.)

Passing to a consideration of the stockholders' contract in the light of the other contention, it may be said that ordinarily it is controlled by the law of the State in which the incorporation is had. That is the place of contract, and, generally, the law of the place where a contract is made governs its nature, interpretation and obligation. While this is so, it is also true that parties in making a contract may have in view some other law than that of the place, and when that is so that other law will control. That the parties have some other law in view and contract with reference to it is shown by an express declaration to that effect. In the absence of such declaration it may be disclosed by the terms of the contract and the purpose with which it is entered into. In *Pritchard* v. *Norton*, (106 U. S. 124,) many cases were cited by Mr. Justice Matthews, delivering the opinion of the court, in which these propositions were illustrated and enforced, and on page 136 it was said:

"The law we are in search of, which is to decide upon the nature, interpretation and validity of the engagement in question, is that which the parties have, either expressly or presumptively, incorporated into their contract as constituting its obligation. It has never been better described

than it was incidentally by Mr. Chief Justice Marshall, in *Wayman* v. *Southard*, (10 Wheat. 1, 48,) where he defined it as a principal of universal law, 'the principle that in every forum a contract is governed by the law with a view to which it was made.' The same idea had been expressed by Lord Mansfield in *Robinson* v. *Bland*, (2 Burr. 1077, 1078,) 'the law of the place,' he said, 'can never be the rule where the transaction is entered into with *an express* view to the law of another country, as the rule by which it is to be governed.' And in *Lloyd* v. *Guibert*, (Law Rep. 1 Q. B. 115, 120,) in the Court of Exchequer Chamber, it was said that 'it is necessary to consider by what general law the parties intended that the transaction should be governed, or rather, by what general law it is just to presume that they have submitted themselves in the matter.' (*Le Breton* v. *Miles*, 8 Paige [N. Y.], 261.)"

The subject was also discussed at length by Mr. Justice Gray in *Liverpool Steam Company* v. *Phenix Insurance Company*, (129 U. S. 397.) In *Coghlan* v. *South Carolina Railroad Company*, (142 U. S. 101, 110,) Mr. Justice Harlan, referring to these two opinions, observed: "The elaborate and careful review of the adjudged cases, American and English, in the two cases last cited, leaves nothing to be said upon the general subject."

In *Bank of Augusta* v. *Earle*, (13 Pet. 519, 588,) Chief Justice Taney said:

"It is very true that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created. . . . But although it must live and have its being in that State only, yet it does not by any means follow that its existence there will not be recognized in other places; and its residence in one State creates no insuperable objection to its power of contracting in another. It is indeed a mere artificial being, invisible and intangible, yet it is a person for certain purposes in contemplation of law, and has been recognized as such by the decisions of this court. It was so held in the case of *The United States* v. *Amedy*, (11 Wheat. 412,) and in *Beaston* v. *The Farmers' Bank of Delaware*, (12 Pet. 135.) Now natural persons, through the intervention of agents, are continually making contracts in countries in which they do not reside, and where they are not personally present when the contract is made, and nobody has ever doubted the validity of these agreements. And what greater objection can there be to the capacity of an artificial person, by its agents, to make a contract within the scope of its limited powers, in a sovereignty in which it does not reside, provided such contracts are permitted to be made by them by the laws of the place?"

And then, after discussing the question of comity, added (p. 589):

"Adopting, as we do, the principle here stated, we proceed to inquire whether, by the comity of nations, foreign corporations are permitted to make contracts within their jurisdiction, and we can perceive no sufficient reason for excluding them when they are not contrary to the known policy of the State, or injurious to its interests.

"It is nothing more than the admission of the existence of an artificial person created by the law of another State, and clothed with the power of making certain contracts. It is but the usual comity of recognizing the law of another State."

As then a corporation can have no legal existence outside of the State in which it is incorporated, the contract of the stockholders with one another, by which the corporation is created, is presumed to have been made with reference to the laws of that State, nothing being said in the charter to the contrary. But as comity permits a corporation to enter another State and do business therein, it is competent for the stockholders in making their charter to contract with reference to the laws of a State in which they propose the corporation shall do business. And in this case the stockholders in their charter specified that the purpose of the incorporation was partly business beyond the limits of Colorado, and that the principal part of such outside business should be carried on in California. Not content to rely upon the general authority which by the rules of comity the Colorado corporation would have to enter California, and transact business therein, they in terms set forth that a part of the purpose of the incorporation was the transaction of business by the corporation in California. Now when they in terms specified that they were framing a corporation for the purpose of having that corporation do business in California is it not clear that they were contracting with reference to the laws of that State? Contracting with reference to the laws of that State they must be assumed to know the provisions of those laws; that by them a personal liability was cast upon the stockholders in corporations formed under the laws of the State, and that that same liability was also imposed upon the stockholders of corporations formed under the laws of other States and doing business within California. How can it be said that those laws do not enter into the contract and control as to all business done in pursuance of that contract within the limits of California? Suppose these same stockholders in Colorado had formed a partnership with the expressed intent of carrying on business in California, would not that expressed intent be a clear reference to the laws of California and an incorporation of those laws into the liabilities created by the partnership business in California? And if this rule obtains as to contracts of partners between themselves, why not also as to contracts of stockholders between themselves in forming a corporation?

In this case it appears that the business transactions out of which these liabilities arose were carried on in California. They resulted from business done in California by virtue of an express contract made by the stockholders with reference to such business. It is unnecessary to express an opinion upon the question whether any personal liability would be assumed by the stockholders in reference to business transacted in Colorado. Parties may contract with special reference to carrying on business in separate States, and when they make an express contract therefor the business transacted in each of the States will be affected by the laws of those States, and may result in a difference of liability. Neither is it necessary to

express any opinion upon the question whether the defendants could have been held liable under the California statutes, independently of the provisions of the Colorado charter. All that we here hold is that when a corporation is formed in one State, and by the express terms of its charter it is created for doing business in another State, and business is done in that State, it must be assumed that the charter contract was made with reference to its laws; and the liabilities which those laws impose will attend the transaction of such business.

The judgment of the Superior Court is

Affirmed

True copy.'

Test:

Clerk Supreme Court, U. S.